

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

In the Matter of the Accusation Against:

MICHAEL EDWARD MCCRORY,

Pharmacist License No. RPH 60906

Respondent.

Case No. 5184

OAH No. 2017040306

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 at 5:00 p.m. on April 12, 2018.

It is so ORDERED on March 13, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Irina Tentser, Administrative Law Judge, heard this matter on October 17 and December 27, 2017, at the Office of Administrative Hearings in Los Angeles, California.

Michael A. Cacciotti, Deputy Attorney General, appeared and represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (the Board), Department of Consumer Affairs.

Jeffrey S. Kravitz, Attorney, appeared and represented Michael Edward McCrory (Respondent), who was present.

The record was closed and the matter was submitted for decision at the conclusion of the hearing on December 27, 2017.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

2. On April 21, 2008, the Board issued Pharmacist License No. RPH 60906 (license) to Respondent. Respondent's license was in full force and effect at all times relevant to the charges brought in the Accusation and is scheduled to expire on November 30, 2019.

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Background

3. a. In August 2013,¹ Brandon Doan, Pharmacist in Charge, of Careplus/CVS Pharmacy #2801 (pharmacy) in West Hollywood, California, was asked by CVS management to conduct a balance on hand count for Hydrocodone/APAP 10-325mg (Norco) and Alprazolam 1 mg (Xanax). A few days after providing the hand count, Mr. Doan was contacted by Ronald Vos, CVS's Regional Loss Prevention Manager, requesting Mr. Doan to provide documents for a reconciliation of Hydrocodone to determine if a variance existed. The reconciliation result indicated that the pharmacy's store inventory appeared to be short by more than 1700 pills. As a result, Mr. Doan was instructed by Mr. Vos to begin taking daily counts of Hydrocodone and to complete an Initial Notification and DEA (Drug Enforcement Agency.)

b. Mr. Doan began to report the daily drug counts to Mr. Vos each week. On September 18, the counts showed a shortage of 100 Norco tablets. Another variance of 200 tablets was discovered on October 15. Because Mr. Doan performed the daily counts, he kept track of the Norco stock bottles on the inventory shelves. On October 19, Mr. Doan noticed a stock bottle missing from the inventory shelf and immediately ran a Drug Usage report to determine if the inventory had been used for a prescription. The report indicated that no prescriptions for Norco were processed that day. Mr. Doan reviewed surveillance camera footage and noticed that Respondent went to the inventory shelf at 2:33 p.m. and grabbed the stock bottle, which he kept at his workstation from 2:33 p.m. to 4:38 p.m. Mr. Doan took two pictures of Respondent's workstation. According to Mr. Doan, one picture showed that Respondent kept the stock bottle hidden between brown paper bags on the counter, and the other showed that Respondent moved the bottle to another section of the counter as he prepared to leave work. Further, Mr. Doan noticed that Respondent had clocked out; yet he lingered aimlessly around his workstation for about 15 minutes. At the time, Respondent had worked at the pharmacy for almost two years as a staff pharmacist.

c. Mr. Doan sent the pictures to Mr. Vos and communicated his suspicions regarding Respondent's daily activities at the pharmacy. Specifically, Mr. Doan noticed during his first three months (June-August 2013) at the pharmacy Respondent duplicated prescription labels and reshipped medication to patients without reporting them on the service events portal. According to Mr. Doan, when he asked Respondent about this, Respondent told Mr. Doan that the packages were lost because the courier left them at the patient's address without getting a signature. Mr. Doan noted that there were multiple patients who were under Respondent's monthly compliance management who reported lost packages and demanded that Mr. Doan replace the controlled substance medications. Respondent did not provide Mr. Doan with a proper explanation about why he would ship a controlled substance without requiring a signature when questioned by Mr. Doan.

d. Mr. Doan also noticed that Respondent selectively looked after the prescriptions for a particular group of patients, usually those with controlled substance

¹ All references herein are to the year 2013 unless otherwise noted.

prescriptions such as Vicodin, Norco, Valium, or Xanax. According to Mr. Doan, Respondent would go to the drop-off counter and greet these patients. Respondent would then take the prescription orders himself, but would ignore other patients who did not have controlled substance prescriptions. Respondent then entered these prescriptions into RxConnect,² print the labels, fill the prescriptions, and verified them. Sometimes these controlled substance prescriptions were filled and counted by techs earlier in the day, but Respondent would not verify them until late in the evening. At times, Respondent would wait for the shipping tech to leave before verifying the orders. When the techs asked him to verify the prescriptions so that they could scan them and package them for shipping, Respondent would tell them not to worry about it. Additionally, Mr. Doan observed that Respondent had a tendency to stay after closing, sometimes for 30-40 minutes after he had already clocked out. When questioned about Mr. Doan about why he was working off the clock, Respondent stated that he needed to use the restroom or needed to finish work. As a result, Mr. Doan told Respondent he could not work off the clock and must leave on time.

Respondent's October 24 Confession

4. a. On October 24, as a result of the drug shortages and Mr. Doan's report of Respondent's suspicious behavior, Respondent was investigated for theft of a controlled substance after he reported to work at the pharmacy. As part of the investigation, CVS's loss prevention employees, Mr. Wos and Christopher E. Knight, conducted an interview with Respondent at the pharmacy. Mr. Wos conducted the interview with Mr. Knight primarily present as a witness. The interview was conducted in a room at the pharmacy. Mr. Wos informed Respondent that the results of the interview could result in his prosecution and termination and that Respondent was free to leave the room at any point during the interview. Based on conflicting testimony, the interview duration was between two and eight hours.

b. During the October 24 interview, Respondent verbally admitted and provided a detailed five-page handwritten confession (Exh. 11, pp. AGO-032-0036.) that between August 2012 to October 24, he stole approximately 1,500 tablets of Norco and that in June 2013 he stole approximately 30 tablets of Alprazolam 1 mg (Xanax). In his written confession, Respondent described the manner in which he stole drugs from the pharmacy, writing that "Once counted, I would put them in a bag or water bottle or grocery sack and - made sure they were under something to pass bag check -" (Exh. 11, p. AGO-0032.)

c. In response to loss prevention's question about who the diverted drugs were for and for what purpose they were taken, Respondent wrote that the ". . . drugs were for my partner for dental pain and for myself . . . because I wanted to feel different than miserable from work." (Exh. 11, p. AGO-0033.) When asked why he was stealing the drugs, Respondent wrote, "[A] few reasons. One, to take care of another. Two, to spite my manager and feel like I could take back just a little bit of control of my life. Third and most motivating, because I wanted to feel different than I was feeling. I did not want to deal with the job or how miserable it had become." (Exh. 11, p. AGO-0035.)

² CVS's computer prescription system.

d. As part of his confession, Respondent confirmed the amount and value of drugs he stole in writing after conferring with Mr. Vos. (Exh. 11, pp. AGO-0033-AGO-0034; Exh. 36.) In addition, Respondent wrote that he was willing to pay back the loss to the pharmacy caused by his drug theft. (Exh. 11, p. AGO-0035.) Respondent further wrote that he loved helping his patients, missed being able to help them, and hoped that he would one day get to help his patients again. (*Id.*)

e. In response to the question of whether he was treated fairly in the interview process, Respondent wrote, "Yes, I was." (Exh. 11, p. AGO-0036.) Additionally, Respondent not only handwrote that he was not threatened or coerced into making his admission statement, but signed his name on each of the five statement pages under the paragraph stating that "I offer this statement voluntarily, and state that it is true, to the best of my knowledge. I have not been threatened, coerced, or promised leniency by any agent of CVS/pharmacy to compel me to submit this statement." (Exh. 11, p. AGO-0032-AGO-0036.)

Board Investigation

5. a. CVS suspended and ultimately terminated Respondent as a result of his stealing drugs from the pharmacy. In addition, CVS reported Respondent's confession to the police. Respondent was not arrested as a result of his drug theft. Further, documentation of the pharmacy's drug losses and Respondent's confession were provided to the Board. Katherine Sill, Board Inspector, was assigned to investigate the matter. Ms. Sill prepared an Investigation Report (Exh. 32) and testified at hearing regarding the Board's investigation. As part of her investigation, Ms. Sill confirmed the pharmacy's drug losses and contacted Respondent on February 11 asking him to contact her within seven business days to discuss his confession. Respondent did not contact Ms. Sill. As a result, more than a year after Ms. Sill contacted Respondent, on February 21, 2014, Ms. Sill mailed her original Investigation Report to the Board.

b. On February 23, 2014, Respondent left a voicemail for Ms. Sill indicating that he would like to meet with her. On February 25, 2014, Ms. Sill and Respondent met in person at a Subway sandwich shop during his lunch break. At the time, Respondent was working full time at an outpatient pharmacy at the Los Angeles County/USC Hospital campus. Ms. Sill brought a copy of Respondent's signed written statement to their meeting. Ms. Sill explained to Respondent that the Board had received notification from the pharmacy that his employment had been terminated and asked Respondent what happened.

c. Respondent described his work history at the pharmacy, focusing on his dissatisfaction with Mr. Doan, whom he described as "mean." (Exh. 32, p. AGO-00135.) After Ms. Sill asked him to describe what happened on October 24, Respondent stated that he was at work when two "corporate" men came in and took him into a back room and started to question him. Respondent stated that the men asked him why he had a Norco bottle on his work desk when he hadn't filled a Norco prescription. Respondent stated that

he had left the bottle on his work desk from the day before and was too lazy to put it away. Respondent said that the “corporate men” told him he was a “good guy;” they wanted to make it easy on him; to just fill out the statement form they gave him and pay the reimbursement; and that he would be “ok. As a result, Respondent said he began writing his signed statement. Respondent admitted to Ms. Sill that he was the one who wrote the admissions in his signed statement. Respondent stated he was intimidated and wrote what he thought the corporate guys wanted him to write. (*Ibid.*)

d. After Ms. Sill asked him why he would admit to stealing drugs, Respondent said it was because they said if he didn’t “cooperate” with them there would be consequences and a meticulous examination of all his previous work to find anything he might have done wrong. (Exh. 32, pp. AGO-00135-AGO-00136.) However, if he “cooperated,” they would make it easy on him if would sign the repayment agreement. Respondent told Ms. Sill that he made everything up in his statement, including his statement that he diverted Norco and Xanax for self-use and for his partner. Ms. Sill then asked him why he would incriminate himself and make up stealing drugs. Respondent did not have a clear answer. Ms. Sill then asked Respondent why he didn’t just quit his job if he was innocent and told Respondent she couldn’t understand why he would make up a story that he diverted controlled substances for himself and his partner if it wasn’t true. Respondent again stated that he felt very intimidated by the two corporate CVS men and they kept telling him if he would cooperate they would “go easy” on him. (*Ibid.*)

e. During their meeting, Ms. Sill gave Respondent a pamphlet for the Pharmacy Recovery Program. (Exh. 32, p. AGO-00136.) Respondent told Ms. Sill that if the Board was going to make him enter the Pharmacist Recovery Program, he would wait until he was forced to because he didn’t want to start this “hell” now. Respondent emphasized to Ms. Sill that he was working in the Patient Assistance Program at the USC-LA County Hospital and did not have any access to drugs. (*Ibid.*)

f. After their meeting, Respondent provided Ms. Sill with a signed statement summarizing what he told her on February 25, 2014. In Respondent’s March 10, 2014 written statement, Respondent wrote, among other things, that: Mr. Doan made Respondent’s life miserable; his confession was coerced; he was told that if he didn’t sign the statement and agree to everything loss prevention said the punishment would be worse and everything would be turned over to the Board; walking out of the interview room was not an option; he was shocked to find out the number of pills he made up matched the amount claimed to be missing; and he was a scared man who hated his job. (Exh. 33, pp. AGO-00144-AGO-00145.)

Credibility Findings

6. The Board did not find Respondent’s recanting of his written statement convincing based on the totality of the evidence and filed the Accusation against Respondent. At hearing, both of the loss prevention employees who were present and conducted the interview with Respondent, Mr. Wos and Mr. Knight, credibly testified that at no time did

they coerce Respondent to verbally admit and provide a handwritten five page statement admitting to stealing Norco and Xanax for Respondent's and his partner's use. Both Mr. Vos and Mr. Knight testified that, after initially denying the theft of Norco, Respondent was gracious and cooperative during the interview and provided his confession willingly. In fact, Mr. Vos testified that Respondent was the one who volunteered that, in addition to Norco, he had also diverted Xanax for his partner on one occasion in June 2013. Further, Mr. Vos disputed that either he or Mr. Knight told Respondent that he could avoid prosecution if made restitution, pointing out that loss prevention had no authority or power to make such an offer.

7. a. In contrast, Respondent provided vague testimony regarding his employment at the pharmacy. For example, Respondent could not recall how long he worked at the pharmacy and could not recall how long he was interviewed on October 24. Despite his repeated statements that he could not recall what happened during the relevant time period, Respondent insisted that his October 24 statement was coerced and that loss prevention told him he would be arrested and jailed if he didn't agree to confess to stealing drugs.

b. Respondent asserted that after loss prevention asked him why he had a bottle of Norco on his desk while no prescription was pending, he repeatedly asked to leave the room to access a pharmacy computer to show that he was filling a prescription on October 23. Mr. Knight credibly disputed Respondent's assertion during his testimony, stating that Respondent did not ask to leave the room to show loss prevention proof of a prescription.³

c. Respondent disputed that he insisted on filling Norco himself instead of allowing pharmacy technicians to count the drugs, as was customary with Schedule III drug prescriptions.⁴ His testimony is less credible than that of Ms. Doan, as described in factual finding 3, and pharmacy technician Yvonne Ekizian, who worked with Respondent at the pharmacy during the relevant time period. Ms. Ekizian testified at hearing and prepared a December 30, 2013 statement to the Board regarding Respondent's actions when working with Norco. (Exh. 18.) Specifically, Ms. Ekizian's testimony corroborated Mr. Doan's

³ It should be noted that, even if Respondent could provide proof of an October 23 Norco prescription, that would not be relevant, as the date in question when Mr. Doan observed the Norco bottle on Respondent's desk when no prescription was pending was on October 19, not October 23, as described in factual finding 3b.

⁴ The Drug Enforcement Administration (DEA) rescheduled all hydrocodone combination products (HCPs), such as hydrocodone/APAP (Norco) from federal Schedule III to federal Schedule II effective October 6, 2014 under the Controlled Substance Act (CSA). While there was no equivalent change to California law, the practical effect was the same in that all prescribers and practitioners in California are now required to treat HCPs as Schedule II controlled substances.

observations that Respondent would count and fill controlled drug prescriptions for Schedule III drugs, such as Norco, himself instead of allowing pharmacy technicians to count the drugs, as was customary. She further described that Respondent would sometimes keep bottles of Scheduled III and IV drugs at his station. According to Ms. Ekizian, Respondent's behavior was unusual in that pharmacists don't usually touch those drugs.

d. Respondent's claims that his confession was coerced and statements of nonresponsibility are not persuasive based on the clear and convincing weight of credible evidence to the contrary. Respondent, recognizing that his written confession is the best evidence that he stole pharmacy drugs, provides self-serving testimony at hearing to avoid Board license discipline. Respondent's testimony fails to convince that there was coercion or duress. Further, the testimony of Victor Branzini, Respondent's partner since 2010, that Mr. Branzini did not have any dental procedures during the relevant time period and that Respondent did not provide him with drugs to help deal with dental pain is provided little weight. Based on Mr. Branzini's conclusory vague testimony and uncomfortable demeanor at hearing, it is clear his testimony was biased and motivated by his desire to help Respondent, with whom he has a long-standing personal romantic relationship. Ultimately, Respondent's testimony that he fabricated a five-page written statement replete with specific details admitting to stealing drugs for himself and his partner when he, in fact, did not steal the drugs because that was his only option to avoid arrest and jail strains credibility and is inherently improbable. Respondent is a sophisticated trained and educated professional who had a number of options, such as quitting his job, rather than incriminate himself by admitting to stealing drugs from his employer. The totality of the circumstances provide clear and convincing evidence that he willingly provided an accurate and detailed confession to stealing drugs because he was miserable in his job and was using drugs in an attempt to make himself feel better about his life. His attempt to recant that confession by falsely alleging that his confession was coerced represents a desperate attempt by Respondent to recant a confession he now regrets providing in order to avoid Board license discipline.

Matters in Aggravation

8. a. On September 27, 2013, the Board issued Respondent a Letter of Admonishment in Case No. CI 201358161 for failure to comply with the laws and regulations that govern the practice of Pharmacy in California.

b. The Board investigation concluded that on or about February 4, 2011, Respondent violated Civil Code section 56.10, subdivision (a) and California Code of Regulations section 1764 (unauthorized disclosure of prescription and medical information). While working as a staff pharmacist at Walgreen's in Los Angeles, California, Respondent dispensed a prescription for patient MR⁵ to patient ZM, releasing patient medical information without authorization.

⁵ Initials are used in lieu of names to provide the patients privacy rights.

c. The Board investigation further concluded that on or about February 4, 2011, Respondent violated California Code of Regulations section 1716 (variation from prescription). While working as a staff pharmacist at Walgreen's in Los Angeles, California, Respondent dispensed a prescription filled with Flomax for patient MR to patient ZM instead of Amoxicillin, as prescribed.

Respondent's Testimony and Other Evidence

9. a. Respondent graduated from Sacramento State University with a Bachelor of Arts in communications degree. He earned his Pharmacy Doctorate from the University of Washington in Seattle in 2005. Respondent completed a specialty residency in HIV (Human Immunodeficiency Virus) at Western University and at the Los Angeles Gay and Lesbian Center. In addition to being currently licensed as a pharmacist in California, Respondent was previously licensed as a pharmacist in Washington. Respondent's first position was as a staff pharmacist and professor at Western University and at the Los Angeles Gay and Lesbian Center. He subsequently worked for a few years at Walgreen's as a general HIV pharmacist. Respondent then worked as a staff pharmacist at the Careplus/CVS pharmacy. After his termination from the CVS pharmacy, Respondent worked for a short time as a staff pharmacist for LA USC Medical Center/General Hospital. He subsequently stopped working to help care for his then-ill parents. Respondent returned to work for a temporary agency and worked for a week at Pharmica in Monterey, California. He has not worked since that temporary position. Respondent was unable to recall the specific dates of his foregoing employment. Respondent testified he has not worked since the Accusation was filed by the Board on March 30, 2017 because the Accusation has made it difficult for him to find employment.

b. Respondent testified that he was not a good employee during his tenure at the pharmacy, admitting to frequent tardiness and absences. However, Respondent denied all of the allegations in the Accusation. He denied any issues with the use of controlled substances. Respondent asserted that he was treated unfairly by Mr. Doan, was miserable in his position at the pharmacy, and regretted providing a false confession. Respondent testified that he loved helping patients as a pharmacist and hoped to continue to work as a pharmacist in the future.

10. a. Respondent submitted seven character reference letters in support of his continued licensure. (Exh. A.)

b. Respondent's former co-worker at the pharmacy, Janet Arroyo, wrote that during her time working with Respondent she never witnessed "any kind of unusual activity or illegal wrongdoing." Ms. Arroyo wrote that she left the pharmacy and the CVS company due to poor management.

c. Respondent's parents, Christen and Jack McCrory, wrote that they were aware of the allegations in the Accusation and do not believe them to be true. Respondent's parents described Respondent's upbringing as one that emphasized the importance of

honesty, integrity and hard work. His parents wrote that Respondent worked at a local pharmacy while attending college and worked his way up from delivery boy to pharmacy technician prior to deciding to become a pharmacist with the encouragement of the pharmacy staff. In their letter, Respondent's parents asserted that Respondent continues to exemplify honesty, integrity and hard work by working with patients to give them the best care possible and that they are proud of their son. They wrote that Respondent recently moved home to help care for his mother who was diagnosed with Thrombocythemia. After he moved home, Respondent's father was diagnosed with stage 4 colon cancer. Respondent's parents wrote that they are both doing better now and feel lucky to have Respondent home with them to get through their illnesses as a family. In summary, Respondent's parents reiterated the pride they feel for their son and described him as "loving" and "kind." (Exh. A.)

d. Kelly Haws, Pharmacy Manager for CareerStaff Rx, wrote a letter attesting to Respondent's employment with CareerStaff Rx. According to Ms. Haws, Respondent worked several shifts for one of their Pharmacy clients in 2016, after successfully passing a drug screen and background check. Ms. Haws wrote that the company had no complaints regarding Respondent's behavior and did not hear of any suspicion of drug usage or medication losses.

e. Beverly A. Wentz, RN, a family friend who has known Respondent for the past 30 years since he was a 10 year old boy, wrote that she was aware of the accusations against Respondent. Mr. Wentz described that she has given Respondent numerous recommendations for employment as a pharmacist in her capacity as a hospital administrator within the Kaiser Hospital system. According to Ms. Wentz, Respondent "cares deeply for people" and has "always been honest and forthright." (Exh. A.)

f. James D. Scott, Pharm.D., M.Ed., FCCP, FASHP, FCSHP, Associate Dean for Experiential and Professional Affairs at Western University Of Health Sciences in Pomona, California, has known Respondent since 2006 when Respondent interviewed for Dr. Scott's residency HIV Pharmacotherapy. Dr. Scott wrote that he offered Respondent the residency, which Respondent completed from July 2006-June 2007, and stayed on an extra two months while Dr. Scott was out of the country. Dr. Scott described that he worked closely with each of his residents, serving as the Residency Program Director as well as the primary preceptor and became close with Respondent. Dr. Scott wrote that Respondent was "of excellent character, with a strong desire to treat each patient with the highest level of care and dignity." (Exh. 2.) He further described Respondent to be a person of "high moral character, showing compassion towards his friends, family and all of those with whom he interacted." (*Id.*)

g. Patti Ehlers, a long-time friend of Respondent, described him as honest, hard-working, thoughtful, courteous, and reliable. Ms. Ehlers described Respondent as a wonderful friend.

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Reasonable Costs of Enforcement

11. Costs of enforcement were requested in the accusation. In support of the costs request, Complainant submitted a certification of \$4,649.50 in investigation and \$7,842.50 in prosecution costs and declarations from the deputy attorney general and Board investigator indicating total costs of \$12,492. The costs are reasonable.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a pharmacy license is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

The Board's Authority to Impose License Discipline

3. Business and Professions Code⁶ section 4300 provides that every license issued by the Board is subject to discipline, including suspension or revocation.

4. Section 4301 states, in pertinent part:

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

[¶] . . . [¶]

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

[¶] . . . [¶]

⁶ All section references are to the Business and Professions Code unless otherwise indicated.

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

[¶] . . . [¶]

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

5. Section 4060 states, in pertinent part:

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

6. Health and Safety Code section 11711 states that “[N]o person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

Controlled Substances/Dangerous Drugs

7. “Norco,” is a brand name for hydrocodone/APAP, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to section 4022.

8. “Vicodin” is a brand name for hydrocodone/APAP, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to section 4022.

9. "Xanax" is a brand name for alprazolam, an anti-anxiety benzodiazepine and is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to section 4022.

Causes – License Discipline

10. Cause exists to discipline Respondent's license for unprofessional conduct pursuant to sections 4301, subdivision (f) (dishonesty), because Respondent, while working as a staff pharmacist at the pharmacy, stole 1,500 tablets of Norco and 30 tablets of Xanax. (Factual Finding 4; Legal Conclusion 4.)

11. Cause exists to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (h) (dangerous use of a controlled substance), because Respondent, while working as a staff pharmacist at the pharmacy, by his own admission, took Norco and Xanax for his own use. (Factual Finding 4; Legal Conclusion 4.)

12. Cause exists to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (j) (violating Health and Safety Code section 11171), because Respondent, while working as a staff pharmacist at the pharmacy, illegally prescribed, administered, and furnished Norco and Xanax to his partner. (Factual Finding 4; Legal Conclusions 4 and 6-9.)

13. Cause exists to discipline Respondent's license for illegal possession of a controlled substance under section 4060, because Respondent illegally possessed 1,500 tablets of Norco and 30 tablets of Xanax. (Factual Finding 4; Legal Conclusion 5.)

Recovery of Costs

14. Section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .

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The Board is entitled to recover from Respondent its reasonable costs incurred in connection with the investigation and prosecution of this matter, under the provisions of section 125.3. The Board has incurred reasonable prosecution costs in the sum of \$12,492. (Factual Finding 11; Legal Conclusion 14.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, (relating to chiropractors) did not violate due process. Since regulation 317.5 and Business and Professions Code section 125.3 have substantially the same language and seek the same sort of cost recovery, it is reasonable to extend the reasoning in *Zuckerman* to section 125.3. The court held that it was incumbent on the Board to exercise its discretion to reduce or eliminate cost awards in a manner that ensured section 317.5 did not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. The *Zuckerman* court set forth four factors that the Board was required to consider when deciding whether to reduce or eliminate costs. These were: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee has the financial ability to make payments.

Respondent's ability to work as a pharmacist will be affected based on the discipline of his license. Accordingly, it would be unduly punitive to order Respondent to pay to the Board its cost recovery at this time without providing Respondent a payment plan to facilitate the repayment.

Degree of License Discipline

15. The Board has developed written guidelines for license discipline matters, referred to in California Code of Regulations, title 16, section 1760, and titled: "Disciplinary Guidelines, (rev. 10/2007)," referred to as the Guidelines. Under this Regulation, the Board is to consider the Guidelines in reaching decisions in disciplinary matters.

16. Under the Guidelines, an Administrative Law Judge may consider the following factors when determining the appropriate level of discipline:

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record, including level of compliance with disciplinary order(s).
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).
5. Number and/or variety of current violations.
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
7. Aggravating evidence.
8. Mitigating evidence.

9. Rehabilitation evidence.
10. Compliance with terms of any criminal sentence, parole, or probation.
11. Overall criminal record.
12. If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
13. Time passed since the act(s) or offense(s).
14. Whether the conduct was intentional or negligence, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge or knowingly participated in such conduct.
15. Financial benefit to the respondent from the misconduct.

(Exh. 35 (Guidelines), p. 3.)

17. The Guidelines include several sections that are relevant to Respondent's case, including examples of the types of evidence that can be submitted to establish mitigating circumstances, and other situations in which probation is the recommended penalty. A minimum of five-year probation period has been established by the Board as appropriate where, as in this case, self-administration or diversion of controlled substances is involved for Category II violations, such as violation of sections 4301 (unprofessional conduct) and 4060 (illegal possession of a controlled substance). (Exh. 35, pp. 5 and 11-12.)

18. Respondent's case presents a sad set of circumstances. Respondent, feeling miserable, trapped, and victimized by management in a job he came to despise, diverted drugs for himself as a means to cope for over a year. Without minimizing the severity of Respondent's actions in diverting controlled substances from the pharmacy for over a year, it is important to note that more than four years have passed since Respondent engaged in the theft. No evidence was presented that Respondent engaged in similar theft behavior either before or after the year-long period he diverted the drugs for his and his partner's use. In fact, Respondent submitted a letter of reference from his most recent employer (Factual Finding 10d), describing Respondent's successful post-incident drug free work history. Similarly, Respondent's character reference letters from friends, family, and his former proctor describe Respondent in compellingly positive terms, highlighting his integrity and care as a professional. Respondent is also credible in the area of his testimony describing his love of his profession and providing care to patients. As a result, the evidence indicates that Respondent's period of theft was an aberration of behavior caused by Respondent's possible addiction to controlled substances and dissatisfaction with his position at the pharmacy. However, based on Respondent's unwillingness after his initial confession to "come clean" with the Board and at hearing regarding his past diversion and use of controlled substances, it is impossible at this time to ascertain the state of Respondent's recovery and rehabilitation. Outright revocation would be unduly punitive in this case based on the length of time that has passed since the acts which led the Board to discipline Respondent's license, Respondent's subsequent positive work history and supportive reference letters, and, most importantly, that addiction is a disease that affected his judgment and ability to make proper decisions during the relevant time period. While outright revocation is not warranted, it is paramount to protect the public from harm due to Respondent's past behavior, lack of

acknowledgment of that behavior, and the uncertainty of the likelihood of recurrence of Respondent's diversion of controlled substances. Accordingly, the order that follows is necessary and sufficient for the protection of the public.

ORDER

Respondent Michael Edward McCrory's Pharmacist License No. RPH 60906 is revoked; however, the revocation is stayed and Respondent's license is placed on probation for five years upon the following terms and conditions:

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence: 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 pharmacy license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

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

6. **Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5184 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his or her 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 5184, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5184 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause his or her 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 5184 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her 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 the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant.

During the period of probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$12,492. Respondent shall make said payments as follows: based on a payment plan established by the Board.

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

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

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

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

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

11. License Surrender While on Probation/Suspension. Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,

Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the board.

Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

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

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

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

Should Respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 20 hours per calendar month in California, Respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least 20 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 20 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

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

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

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

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

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

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until Respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

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

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

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

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

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

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

19. **Prescription Coordination and Monitoring of Prescription Use.** Within thirty (30) days of the effective date of this decision, Respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the respondent's history [with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental illness, and/or of gambling addiction] and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner,

physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the approved practitioner, Respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that Respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, Respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

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

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

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

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

DATED: January 19, 2018

DocuSigned by:

Irina Tentser

IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:
12 **MICHAEL EDWARD MCCRORY**
12126 Magnolia Road
13 Grass Valley, CA 95949
14 Pharmacist License No. RPH 60906
15 Respondent.

Case No. 5184
A C C U S A T I O N

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 (Board), Department of Consumer Affairs.
21 2. On or about April 21, 2008, the Board issued Pharmacist License No. RPH 60906 to
22 Michael Edward McCrory (Respondent). The Pharmacist License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on November 30, 2017, unless
24 renewed.

25 **JURISDICTION**

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

28 ///

1 STATUTORY PROVISIONS

2 4. Section 4300 provides in pertinent part, that every license issued by the Boards is
3 subject to discipline, including suspension or revocation.

4 5. Section 4300.1 states:

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

10 6. Section 4301 states, in pertinent part:

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

14

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

18

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

24

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

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28 ///

1 pharmacy for his own use. Complainant refers to and by this reference incorporates the
2 allegations in paragraph 11, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct- Illegal Furnishing of Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
6 the grounds of unprofessional conduct for violating Health and Safety Code section 11171, in that
7 while working as a pharmacist at Careplus/CVS Pharmacy #2801, Respondent illegally
8 prescribed, administered or furnished hydrocodone/APAP 10-325 and alprazolam 1mg to another.
9 Complainant refers to and by this reference incorporates the allegations in paragraph 11, as
10 though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Illegal Possession of a Controlled Substance)**

13 15. Respondent is subject to disciplinary action under section 4060, in that while working
14 as a pharmacist at Careplus/CVS Pharmacy #2801, Respondent illegally possessed over 1,500
15 tablets of hydrocodone/APAP 10-325 and 30 tablets of alprazolam 1mg. Complainant refers to
16 and by this reference incorporates the allegations in paragraph 11, as though set forth fully.

17 **DISCIPLINE CONSIDERATIONS**

18 16. To determine the degree of discipline, Complainant alleges that:

19 a. On or about September 27, 2013, the Board issued Respondent a Letter of
20 Admonishment in case no. CI 2013 58161 for failure to comply with the laws and regulations that
21 govern the practice of Pharmacy in California.

22 b. The Boards investigation concluded that on or about February 4, 2011, Respondent
23 violated Civil Code section 56.10 (a) and California Code of Regulations section 1764
24 (Unauthorized disclosure of prescription and medical information). While working as a staff
25 pharmacist at Walgreen's in Los Angeles, CA, Respondent dispensed a prescription for patient
26 MR to patient ZM releasing patient medical information without authorization.

27 c. The Boards investigation also concluded that on or about February 4, 2011,
28 Respondent violated California Code of Regulations section 1716 (Variation from prescription).

1 While working as a staff pharmacist at Walgreen's in Los Angeles, CA, Respondent dispensed a
2 prescription filled with Flomax for patient MR to patient ZM instead of amoxicillin as prescribed.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacist License No. RPH 60906, issued to Michael
7 Edward McCrory;
- 8 2. Ordering Michael Edward McCrory to pay the Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: 11/14/16

Virginia Herold

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

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