

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

In the Matter of the Accusation Against:

**STEVEN IANNONE
11875 Country Garden Drive
Rancho Cordova, CA 95742**

Pharmacist License No. RPH 68846

Respondent.

Case No. 5349

OAH No. 2015010180

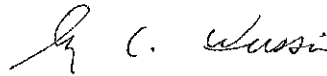
DECISION AND ORDER

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 April 24, 2015.

It is so ORDERED on March 25, 2015.

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:

STEVEN IANNONE
Rancho Cordova, California 95742

Pharmacist License No. RPH 68846

Respondent.

Case No. 5349

OAH No. 2015010180

PROPOSED DECISION

This matter was heard before Administrative Law Judge Erin R. Koch-Goodman, State of California, Office of Administrative Hearings, in Sacramento, on February 2, 2015.

Phillip L. Arthur, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Steven Iannone (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 2, 2015.

FACTUAL FINDINGS

1. The Board of Pharmacy (Board) has jurisdiction to suspend, revoke, and/or discipline a license holder. (Bus. & Prof. Code, § 4300.)

2. On December 13, 2012, respondent submitted an application for his pharmacist examination and licensure. On July 1, 2013, the Board issued Pharmacist License Number RPH 68846 to respondent. The Pharmacist License is scheduled to expire on September 30, 2016. On December 8, 2014, the Board suspended respondent's Pharmacist License, pursuant to an Interim Suspension Order.

3. On December 11, 2014, complainant brought this Accusation, in her official capacity, against respondent for unprofessional conduct, specifically, knowingly making

false statements on his application for licensure; testing positive for a controlled substance not prescribed to respondent while enrolled in the Pharmacist Recovery Program (PRP) - MAXIMUS; and upon amendment¹ at hearing, his termination from MAXIMUS.

Cause for Discipline

4. On December 13, 2012, respondent submitted an application for the pharmacist examination and licensure. Page two of the application lists 18 yes or no questions. Question 13 states:

Do you currently engage, or have you been engaged in the past two years, in the illegal use of controlled substances? Yes or No. If "yes," are you currently participating in a supervised rehabilitation program or professional assistance program which monitors you in order to assure that you are not engaging in the illegal use of controlled substances? Yes or No.

Respondent answered no and submitted his application. On July 1, 2013, the Board issued Pharmacist License Number RPH 68846 to respondent.

5. On May 14, 2014, respondent appeared at the Board and spoke to Jenna Weddle, Enforcement Analyst. Respondent told Weddle that he had incorrectly marked "no" to question 13 on his application for licensure and he wanted to amend his answer to "yes," because he had tried pot brownies. Weddle directed respondent to send her a more specific statement via email.

6. On May 15, 2014, respondent emailed Weddle, stating, in part:

To complete the form, there was a question asking if I had done "illegal" drugs in the past 5 years, or if I have (sic) am in rehab. I marked the box NO. I would like to switch that answer to YES.

¹ Complainant moved to amend the Accusation to add a Fifth Cause for Discipline. The motion was granted. The Fifth Cause for Discipline reads:

Unsuccessful Completion of Diversion Program. Respondent is subject to disciplinary action under sections 4362, subdivision (b), and section 4369, subdivision (c), in that respondent was terminated from the Pharmacist Recovery Program and admitted to staff that he had previously used controlled substances including Phentermine, Oxycotin, Adderall, Hydrochlorothiazide, Trimerathine, Lisinopril, Vicodin, Dextro Amphetamine, Methadone, and Morphine Oral Solution.

7. On May 16, 2014, Weddle responded to respondent and asked for a specific answer to the following questions.

- What type of drugs/controlled substances have you used?
- How long have you engaged in the use of drugs/controlled substances?
- When did you enroll in treatment?

8. The same day, respondent emailed Weddle, writing, in part:

During my [Introductory Pharmacy Practice Experience] IPPE rotations I illegally tried 6 pills from various rotations. They include (sic) 2 Vicodin 5/500 in 2009, 1 oxycontin 10 mg, 1 dextro amphetamine 10 mg, 2010, I tasted methadone and morphine oral solution (to no effect) and tasted a marijuana brownie.

In 2011, During (sic) my [Advance Pharmacy Practice Experience] APPE rotations, I tried 2 phentermine 37.5 mg pills.

9. No person shall possess any controlled substance or dangerous drug except that furnished to a person upon the prescription of a physician . . .” (Bus. & Prof. Code §§ 4059 & 4060.) A “dangerous drug” means any drug for self-use in humans and includes the following language: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.” (Bus. & Prof. Code § 4022, subd. (a).) Vicodine is a Schedule III controlled substance. (Health & Saf. Code § 11056, subd. (e)(4).) Oxycontin is a Schedule II controlled substance. (Health & Saf. Code § 11055, subd. (b)(1)(M).) Amphetamine is a Schedule II controlled substance. (Health & Saf. Code § 11055, subd. (d)(1).) Methadone is a Schedule II controlled substance. (Health & Saf. Code § 11055, subd. (c)(14).) Morphine is a Schedule II controlled substance. (Health & Saf. Code § 11055, subd. (b)(1)(L).) Phentermine is a Schedule IV controlled substance. (Health & Saf. Code § 11057, subd. (f)(4).)

10. On May 20, 2014, Weddle emailed respondent and provided him information on the Pharmacist Recovery Program (PRP), MAXIMUS. Specifically, Weddle wrote: “[y]ou can voluntarily contact this rehabilitation and treatment program”

Respondent contacted MAXIMUS. On October 2, 2014, Anne Mireles, Clinical Case Manager, conducted a telephonic intake interview with respondent. Respondent admitted to Mireles that he diverted medications from the pharmacies where he did his internship, including Phentermine, Oxycotin, Adderall, Hydrochlorothiazide, Timerathine, and

Lisinopril, for a total of seven pills. Adderall is a Schedule II controlled substance. (Health & Saf. Code § 11055, subd. (d)(1).) In addition, respondent told Mireles that he was currently prescribed and was taking Norco (i.e. Hydromorphone/Hydrocodone) for pain. Norco is a Schedule II controlled substance. (Health & Saf. Code § 11055, subs. (b)(1)(I) & (b)(1)(J).)

Mireles reviewed the objectives and requirements of MAXIMUS with respondent, including but not limited to: random drug tests; daily 12-step program meetings; providing to MAXIMUS copies of all current prescriptions, a current photo identification, and the signed contract for enrollment, within 10 days; and to make weekly check-in telephone calls to Mireles. In addition, Mireles provided respondent a telephone contact telephone number for a Support Group Facilitator (SGF) and directed respondent to make contact.

As a part of the MAXIMUS screening process, on October 10, 2014, respondent was directed to Stephen F. Grinstead for a clinical addiction assessment to determine his eligibility for the MAXIMUS program. Grinstead has a Masters in Counseling, a Doctorate in Addictive Disorders, and he is a Licensed Marriage and Family Therapist. Grinstead's qualifications and experience are sufficient to make him an expert in the area of addiction assessment. Grinstead found respondent to be an "appropriate candidate" for the PRP, but "NOT highly motivated." Grinstead also noted: "I do NOT believe that he [respondent] is safe to be working with the public as a Licensed Pharmacist."

On October 13, 2014, respondent spoke with Mireles by phone. Based upon Grinstead's recommendations, Mireles referred respondent to a Chemically Dependent Recovery Program (CD-RP) for enrollment.

On October 22, 2014, respondent submitted to a MAXIMUS ordered random drug test. On October 24, 2014, the results of the test showed that respondent was positive for Hydromorphone/Hydrocodone (a.k.a. Norco). From October 24 through 26, 2014, Mireles tried to speak with respondent by telephone to discuss his drug test results, but was unable to reach him. At all times relevant, respondent failed to provide MAXIMUS a copy of a personal prescription for Norco.

On October 27, 2014, MAXIMUS terminated respondent from the PRP and identified him as a "public risk," because respondent admitted to diverting medications for his own use and using Norco prior to his work shifts; he tested positive for Norco and failed to submit a prescription; he failed to return a signed MAXIMUS contract and failed to communicate with his assigned SGF or enroll in a CDRP; and the clinical assessment made by Grinstead found that respondent was unsafe to practice as a pharmacist at this time.

11. On November 26, 2014, and again on December 2, 2014, respondent was served with a copy of an Ex Parte Petition for Interim Suspension Order and an Ex Parte Amended Petition for Interim Suspension Order (Petition) and all documents in support thereof. The Petition requested that respondent's license be immediately suspended, because allowing respondent to continue practicing would endanger the public health, safety, or

welfare. A hearing on the Petition was scheduled for December 8, 2014. Mr. Arthur appeared for complainant and respondent appeared and represented himself. On December 8, 2014, a final Order was issued granting the Petition to immediately suspend respondent's license.

Respondent's Evidence

12. Respondent testified that he was never committed to becoming a pharmacist. At hearing, he recounted his journey toward pharmacology: he had a successful career as a junior college professor, but his wife and parents wanted him to go to pharmacy school, so he applied. He was accepted into a pharmacy school in Nevada, but chose not go because of the physical distance from home. When a pharmacy school opened in Sacramento, he applied because he had promised his wife. He was accepted and attended, but remembers that he "would get very upset in pharmacy school with saying yes to going;" and that he "was much happier as a teacher." Respondent acknowledged that diverting pills during his internship, as well as reporting his conduct to the Board, were both attempts to sabotage his career as a pharmacist. Based on the above, respondent's current motivation to remain a pharmacist is in question.

As rehabilitation, respondent testified that he attempted to seek drug rehabilitation counseling for himself, but was unable to meet the requirements of MAXIMUS in October 2014. However, on December 3, 2014, respondent enrolled in the Kaiser Permanente Chemical Dependency Recovery Program (CDRP). From December 3 through December 25, 2014, respondent attended "Phase I" of the CDRP. Phase I was 21-days of in-patient care requiring an abstinence from drugs and alcohol and mandatory attendance at counseling sessions and group meetings. Respondent is currently participating in Phase II, with two weeks remaining. Phase II includes out-patient support group meetings.

Notwithstanding the above, respondent believes that he is a changed man. He now seeks support for his life problems from his church. He has attended Narcotics Anonymous meetings through his church and believes that "all should attend." He wants to "put this behind [me] and practice pharmacy in a good way." He believes that he is a good pharmacist and he "wants to help people." That said, when asked what he has learned from this experience, respondent answered: you "shouldn't disclose certain things to your employer because you will be put under a microscope and castigated;" and that "I hurt more people than I helped by telling the Board" by disclosing his drug use. Respondent's reticence in reporting his drug use is contrary to the obligations of a pharmacist and runs afoul of the requirements of the Board to protect the public.

13. Respondent offered three letters of reference in support of his continued licensure.² David Pearson, Ph.D., an Assistant Dean for Research Affairs and Associate

² Government Code section 11513, subdivision (d) provides: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely

Professor, Pharmaceutical and Biomedical Sciences, California Northstate University College of Pharmacy, employed respondent as a teaching assistant while respondent was enrolled at Northstate. Pearson was and is a mentor to respondent and writes: "I believe that he understands the mistake he made and the gravity of the situation and I strongly believe that he will not try medications again from work without a valid prescription as mandated by the Pharmacy Law book."

Gil Topete, a lifelong friend and coworker at Legi-Tech, a legislative information company in the 1990s, writes:

The admitted actions by Steve to taking controlled substances on his own accord prior to becoming a pharmacist are not consistent with the behavior of the person I call my friend. However, the fact that he came forward and admitted his actions freely, understanding that there may be consequences to his disclosure is consistent with the man I do know.

Hector and Natalia Estrada have lived next door to respondent for the past seven years and describe respondent as "smart, well-meaning and honest." The Estrada's write:

We have heard that he admitted to taking pills during his internship and he has apologized. We think he is sincere in this apology and would not expect him to do such a thing again.

In addition, respondent offered a reference letter and testimony from his wife, Thanh Truong, his mother, Sarah Iannone, and his father, Albert Iannone, and the testimony of a friend from his Kaiser CDRP, Emiliano Rios. Truong is a senior pharmacy technician. She believes her husband to be an honest man and hopes that his "commitment to joining the Rehab program proves to the Board of Pharmacy his commitment to learn from (sic) experience." Sarah and Albert Iannone describe respondent as compassionate and trustworthy.

Respondent's friend, Rios, testified and provided a compelling account of his own personal journey in the Kaiser diversion program. Rios characterized respondent as different than the average program participant, because he is trustworthy and honest. Rios testified that respondent has provided him with the friendship, strength, and support needed to successfully speak to Kaiser staff and taper down his medications without relapse.

14. Finally, on January 29, 2015, at respondent's request, Grinstead met with respondent to perform another clinical assessment. Now, Grinstead found respondent "has demonstrated an increased motivation for his recovery process;" and concluded that "I now

objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

consider him to be stable and safe to be working as a Pharmacist and believe he should be monitored for at least 2 years-e.g., Probation.”

Discussion

15. Respondent’s testimony was filled with perplexing justifications and poorly reasoned decisions. For example, respondent explained that he diverted drugs because he was a “curious person” who liked to try “things” and “did not consider this ‘illegal’ at the time because I thought I was the boss and could make my own rules.” Here, respondent repeatedly failed to appreciate his professional responsibilities as a pharmacist.

After completing his internship, respondent submitted his application to the Board in November 2012, under penalty of perjury, pledging that he had not used illegal drugs within the last two years. At all times, respondent knew that his application contained false information regarding his recent drug use. In May 2014, he reported said drug use, in great detail, to the Board. Respondent has a degree in chemistry and pharmacology. He was, and is, more than capable of reading and understanding the questions on the license application. Given the above, respondent failed to honestly answer question 13 on his application.

After reporting his drug use, respondent described himself to the Board as “willing to do whatever you ask to keep my license if possible.” At the suggestion of Weddle, respondent enrolled in the MAXIMUS program. But respondent’s subsequent conduct shows a complete a complete lack of commitment. On October 22, 2014, respondent submitted to a random drug test; the First Lab recorded a positive drug test for Norco, for which respondent failed to provide MAXIMUS a prescription. Then, respondent failed to return phone calls from Mireles about his positive drug test; and MAXIMUS sent respondent an “at risk” termination letter dated October 27, 2014. Following his termination from the program, respondent received an Ex Parte Petition for Interim Suspension Order and an Ex Parte Amended Petition for Interim Suspension Order (Petition) and all documents in support thereof dated November 26, 2014, and December 2, 2014. So while on December 3, 2014, respondent enrolled in the Kaiser CDRP, respondent was clearly motivated by the impending accusation from the Board.

Respondent has completed approximately six weeks of the Kaiser diversion program. He testified that he is subject to random drug testing at Kaiser and that he has tested negative during his tenure. When questioned, respondent was unable to articulate what he has learned thus far from the program or how the program has increased his awareness of the effects drugs have on behavior, judgment, or desire. Respondent attempted to introduce documents to support his claims (i.e. participation in the Kaiser CDRP, completion of Phase I, and a letter verifying respondent had a prescription for Norco), but without authentication, none were admitted. As such, respondent was unable to corroborate his testimony relative to his rehabilitation.

Respondent has a caring group of family and friends around him. He has disclosed his illegal drug diversion to his supporters; many of whom believe that respondent’s

diversion was out of character, because he is so honest. However, respondent's supporters seemed unaware that respondent never wanted to be a pharmacist; and he failed to provide the testimony to resolve that conflict. Respondent acknowledged that he had disappointed his wife and parents, who were present and listening, but never expressed personal embarrassment or disgrace for his behavior.

Ultimately, respondent seemed unable to grasp the harmfulness of his conduct. Respondent offered several apologies and some odd explanations for his behavior, but few believable assurances or concrete examples of his ability to use good judgment to safely practice as a pharmacist at this time.

Costs

16. Complainant has requested costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the total amount of \$212.50. In support of this request, complainant submitted a Declaration from the Deputy Attorney General and a computer printout of the tasks performed by the Office of the Attorney General. From the information presented, the time spent was reasonable, and the activities conducted were necessary and appropriate to the development and presentation of the case. There were no charges by the Office of the Attorney General related to the interim suspension order.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4301, the Board may take action against the holder of any license who has engaged in unprofessional conduct, including:

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] ... [¶]

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of 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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

[¶] ... [¶]

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

[¶] ... [¶]

(p) Actions or conduct that would have warranted denial of a license.

2. Pursuant to Business and Professions Code section 480, subdivision (a)(2):

[a] board may deny a license regulated by this code on the grounds that the applicant has . . . [d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

3. Business and Professions Code section 4060 mandates that no person shall possess any controlled substance without a prescription. More specifically, title 21 of the United States Code section 829, subdivisions (a) and (b) dictate that no controlled substance in schedule II or III may be dispensed without a written prescription. And Health and Safety Code sections 11350, subdivision (a) and 11377, subdivision (a) state that possession of a schedule III, IV, and V controlled substance, without a prescription, shall be punishable by up to one year in jail.

4. Finally, Business and Professions Code sections 4362 and 4369 provide guidance on entry into the PRP, failure to comply with the PRP, and Board enforcement relative to the PRP. Business and Professions Code section 4362, subdivision (b) states:

A pharmacist or intern pharmacist who [voluntarily] enters the pharmacists recovery program . . . shall not be subject to discipline or other enforcement action by the board solely on his or her entry into the pharmacists recovery program or on information obtained from the pharmacist or intern pharmacist while participating in the program unless the pharmacist or intern pharmacist would pose a threat to the health and safety of

the public. However, if the board receives information regarding the conduct of the pharmacist or intern pharmacist, that information may serve as a basis for discipline or other enforcement by the board.

A pharmacist who fails to comply with the terms of the PRP may be terminated from the program. (Bus. & Profs. Code, § 4369, subd. (a).) The name and license number of a pharmacist who is terminated from the PRP and the basis for the termination shall be reported to the Board. (*Ibid.*) Furthermore, the Board is not precluded from commencing disciplinary action against a licensee who is terminated from the PRP (Bus. & Profs. Code, § 4369, subd. (c).), and participation in the PRP cannot be a defense to any disciplinary action. (Bus. & Profs. Code, § 4369, subd. (b).)

5. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (g), by reason of the matters set forth in Findings 4 through 10. Respondent knowingly signed his application for pharmacist examination and licensure when it falsely represented the existence or nonexistence of a state of facts. On May 14, 2014, respondent reported to the Board that he incorrectly marked "no" to question 13 on his application for licensure and he wanted to amend his answer to "yes", because he had diverted illegal controlled substances.

6. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (h), and title 21 United States Code section 829(a) and (b), by reason of the matter set forth in Findings 8 and 10. Respondent unlawfully self-administered controlled substances, including Vicodin, Oxycontin, Dextro-Amphetamine, Phentermine, Methadone, Morphine, and marijuana, and tested positive for Hydromorphone/Hydrocodone while in the PRP, without presenting a prescription for the same.

7. Cause for disciplinary action under Business and Professions Code sections 4060 and 4301, subdivisions (j) and (o), and California Health and Safety Code sections 11350(a) and 11377(a), by reason of the matters set forth in Findings 8 and 10. Respondent violated state and federal law by unlawfully self-administering controlled substances without a prescription.

8. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (p), and 480, subdivision (a)(2), by reason of the matters set forth in Findings 4 through 10. Respondent engaged in actions that would have warranted denial of a license when he made a false statement on his application for pharmacist examination and licensure.

9. Cause for discipline exists under Business and Professions Code section 4362, subdivision (b), by reason of the matters in Finding 10. Section 4369, subdivision (c), does not state a cause of action under which discipline can be brought. Section 4362 allows the Board to seek discipline against a pharmacist who enters the PRP, but only if the pharmacist would pose a threat to the health and safety of the public based upon information obtained

from the pharmacist while he/she was participating in the PRP. Here, respondent reported to Mireles his diversion and use of multiple illegal controlled substances and then tested positive for Hydromorphone/Hydrocodone, without a prescription on file. A pharmacist who self-administers illegal controlled substances is a threat to the health and safety of the public.

10. The matters set forth in Finding 15 have been considered. Respondent practiced as a pharmacist for approximately two months. At this time, he has not met his burden of demonstrating that he is substantially rehabilitated. He requires additional time to complete a rehabilitation program, and to demonstrate that he is safe and can be trusted to practice pharmacy. The recency of his drug use and disclosure, as well as other concerns detailed in Findings 10, 12, and 15, make it inconsistent with the public interest to allow him to retain his pharmacist license. Furthermore, it would be contrary to the public interest to issue respondent a probationary license at this time either.

11. As set forth in Finding 16, complainant has requested costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the total amount of \$212.50. These costs are reasonable.

ORDER

1. Pharmacist License Number RPH 68846 issued to Steven Iannone is revoked pursuant to Legal Conclusions 5 through 10. _____

2. Respondent shall pay to the Board \$212.50 within 30 days of the effective date of this Decision pursuant to Legal Conclusions 11.

DATED: February 27, 2015



ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:

Case No. 5349

12 **STEVEN A. IANNONE**
13 **11875 Country Garden Drive**
14 **Rancho Cordova, CA 95742**

A C C U S A T I O N

15 **Pharmacist License No. RPH 68846**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 1, 2013, the Board of Pharmacy issued Pharmacist License Number
23 RPH 68846 to Steven A. Iannone (Respondent). The Pharmacist License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on September 30, 2016,
25 unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

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

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

7 5. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 480 of the Code states, in pertinent part:

15 (a) A board may deny a license regulated by this code on the grounds that the applicant has
16 one of the following:

17 "...

18 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
19 benefit himself or herself or another, or substantially injure another. . . ."

20 7. Section 4022 of the Code states:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in
22 humans or animals, and includes the following:

23 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
24 prescription," "Rx only," or words of similar import.

25 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
26 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
27 in with the designation of the practitioner licensed to use or order use of the device.

28 ///

1 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
2 prescription or furnished pursuant to Section 4006."

3 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
4 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

6 9. Section 4060 of the Code states, in pertinent part:

7 "No person shall possess any controlled substance, except that furnished to a person upon
8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
10 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
11 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
12 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
13 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. . . ."

14 10. Section 4301 of the Code states, in pertinent part:

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

18 ". . .

19 "(g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

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

26 ". . .

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

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

"...

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

(p) Actions or conduct that would have warranted denial of a license. . . .”

HEALTH AND SAFETY CODE

11. California Health and Safety Code section 11350 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision . . . (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year”

12. California Health and Safety Code section 11377 states, in pertinent part:

“(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug . . . unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. . . .”

REGULATIONS

13. Title 21 of the United States Code, section 829 states, in pertinent part:

“(a) Schedule II substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without the written prescription of a practitioner, except that in emergency

1 situations, as prescribed by the Secretary by regulation after consultation with the Attorney
2 General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of
3 that Act [21 USCS § 353(b)]. Prescriptions shall be retained in conformity with the requirements
4 of section 307 of this title [21 USCS § 827]. No prescription for a controlled substance in
5 schedule II may be refilled.

6 “(b) Schedule III and IV substances. Except when dispensed directly by a practitioner, other
7 than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a
8 prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§
9 301 et seq.], may be dispensed without a written or oral prescription in conformity with section
10 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than
11 six months after the date thereof or be refilled more than five times after the date of the
12 prescription unless renewed by the practitioner. . . .”

13 COST RECOVERY

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

18 DANGEROUS DRUGS

19 15. *Vicodin* is a compound consisting of 5 mg hydrocodone bitartrate, also known as
20 dihydrocodeinone, and 500 mg acetaminophen per tablet, and is a Schedule III controlled
21 substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

22 16. *Phentermine hydrochloride* is a Schedule IV controlled substance as designated by
23 Health and Safety Code section 11057, subdivision (f)(4).

24 17. *Oxycontin* is a trade name for controlled release oxycodone. Oxycodone is a
25 Schedule II controlled substance as designated by Health and Safety Code section 11055,
26 subdivision (b)(1)(M).

27 18. *Amphetamine* is a Schedule II controlled substance as designated by Health and
28 Safety Code section 11055, subdivision (d)(1).

1 19. *Methadone Hydrochloride* is a Schedule II controlled substance as designated by
2 Health and Safety Code section 11055, subdivision (c)(14) and a dangerous drug pursuant to
3 Code section 4022.

4 20. *Morphine* is a Schedule II controlled substance as designated by Health and Safety
5 Code section 11055, subdivision (b)(1)(L).

6 21. *Adderall*, an amphetamine indicated for the treatment of Attention Deficit
7 Hyperactivity Disorder and narcolepsy, is a Schedule II controlled substance as designated by
8 Health and Safety Code section 11055, subdivision (d)(1).

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct—Knowingly Making or Signing Any Certificate or Document**
11 **That Falsely Represents the Existence or Nonexistence of a State of Facts)**

12 22. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
13 Respondent knowingly signed his application for pharmacist examination and licensure when it
14 falsely represented the existence or nonexistence of a state of facts. The facts and circumstances
15 are as follows:

16 23. On or about May 14, 2014, Respondent self-reported to the Board that he made a false
17 statement on his application for pharmacist examination and licensure when he answered “no” to
18 question 13 on his application (which asks if he currently engages, or has ever been engaged in
19 the past two years, in the illegal use of controlled substances), when he should have answered
20 “yes.” Respondent informed the Board that in the two years preceding the submission of his
21 pharmacist application, he tried “pot brownies” and that he was a curious person and liked to try
22 “things.”

23 24. On or about May 16, 2014, Respondent sent an e-mail to the Board stating that he
24 illegally tried six pills from various rotations—Introductory Pharmacy Practice Experience and
25 Advance Pharmacy Practice Experience. Respondent disclosed that between 2009 and 2011, he
26 tried the following: (1) two Vicodin 5/500; (2) two Phentermine 37.5 mg pills; (3) one Oxycontin
27 10 mg; (4) one Dextro Amphetamine 10 mg; (5) “tasted” an unknown amount of Methadone;

1 (6) "tasted" an unknown amount of Morphine Oral Solution; and (7) "tasted" a Marijuana
2 brownie.

3 25. On or about October 2, 2014, during a telephonic intake interview with the
4 Pharmacist Recovery Program at MAXIMUS, a diversion program that contracts with the Board,
5 Respondent admitted to diverting unknown quantities of controlled substances and dangerous
6 drugs from the pharmacies where he performed his internship. Respondent admitted to diverting
7 the following medications: Phentermine, Oxycotin, Adderall, Hydrochlorothiazide, Trimerathine,
8 and Lisinopril. Respondent further admitted to taking prescribed Norco before his shift.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct—Unlawful Self-Administering of Controlled Substances)**

11 26. Respondent is subject to disciplinary action under section 4301(h) of the Code, and
12 title 21 of the United States Code, section 829(a) and (b), in that he unlawfully self-administered
13 controlled substances. The facts and circumstances are described in more particularity in
14 paragraphs 24-25, and as follows:

15 27. On or about October 22, 2014, Respondent submitted a Random Drug Test to
16 MAXIMUS which was positive for Hydromorphone/Hydrocodone. Respondent never submitted
17 a prescription to MAXIMUS for Hydromorphone/Hydrocodone.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct—Violation of Statutes Regulating Controlled Substances)**

20 28. Respondent is subject to disciplinary action under sections 4060 and 4301(j) and (o)
21 of the Code, and section 11350(a) of the California Health and Safety Code, in that he violated
22 section 4060 of the Code, and California Health and Safety Code sections 11350(a) and 11377(a)
23 when between 2009 and 2014, he illegally self-administered controlled substances without a
24 prescription: The facts and circumstances are set forth in more particularity in paragraphs 24-25,
25 and 27.

26 ///

27 ///

28 ///

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

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct—False Statement on Application)

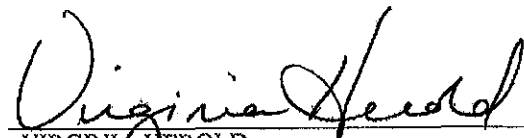
29. Respondent is subject to disciplinary action under section 4301(p) of the Code for engaging in actions that would have warranted denial of a license, by and through section 480(a)(2) of the Code, for making a false statement on his application for pharmacist examination and licensure. The facts and circumstances are described with more particularity in paragraphs 23-25.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 68846, issued to Steven A. Iannone;
2. Ordering Steven A. Iannone to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/11/14



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

SA2014119106/11615677.doc