



California State Board of Pharmacy
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

2017 FEB -6 PM 2:25

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Maria Lage</u>	Case No. <u>5422</u>
Address of Record: <u>3479 Senasac Avenue</u> <u>Long Beach, CA 90808</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 5422, I hereby request to surrender my license, License No. RPH 52487. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

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

Maria Lage
 Applicant's Signature

Virginia Howard
 Executive Officer's Approval

2/6/17
 Date

2/6/17
 Date

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

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

In the Matter of the Accusation Against:

MARIA LAGE
3479 Senasac Avenue
Long Beach, CA 90808

Pharmacist License No. RPH 52687

Respondent.

Case No. 5422

OAH No. 2015110964

DECISION AFTER REJECTION

This matter was heard by Humberto Flores, Administrative Law Judge (ALJ), Office of Administrative Hearings, on February 10, 2016, in Los Angeles, California. Deputy Attorney General Langston Edwards represented complainant. Maria Lage (respondent) appeared at the hearing and represented herself. Evidence was received and the record was left open to allow complainant to submit disciplinary guidelines issued by the Board of Pharmacy. The guidelines were received on February 16, 2016, and marked Exhibit 8 for identification only. The matter was originally deemed submitted on February 16, 2016.

On March 14, 2016, the ALJ issued an Order Reopening the Record (marked Exhibit 9 for identification) requesting that the parties submit written briefs addressing whether respondent's current job duties should be considered practicing pharmacy under Business and Professions Code section 4050. Respondent was also directed to submit a declaration which specified in detail her job duties.

On March 25, 2016, Adam B. Brown, Attorney at Law, informed the ALJ that he was now representing respondent. On April 13, 2016, respondent submitted a "Supplemental Reply to the Order Reopening the Record" which contained a declaration from respondent detailing the requirements and duties of a Senior Medical Liaison for Novo Nordisk (marked Exhibit D for identification). The record was closed the matter was deemed submitted on April 13, 2016. On May 5, 2016, the ALJ issued his Proposed Decision.

On August 5, 2016, pursuant to section 11517 of the Government Code, the California State Board of Pharmacy ("Board") issued an Order rejecting the May 5, 2016, Proposed Decision of the ALJ in the above-entitled matter. On September 16, 2016, the Board issued an Order

reflecting that the transcript had been received and the deadline for submission of written argument was set for October 17, 2016. Both parties timely submitted written argument.

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

FACTUAL FINDINGS

1. Virginia Herold made and filed the Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On September 4, 2001, the Board issued Pharmacist License Number RPH 52687 to respondent. Respondent's pharmacist's license is in full force and effect.

3. On January 29, 2015, in the Superior Court of California, County of Los Angeles (Case No. 4SY03724), respondent was convicted on her plea of nolo contendere to one count charging a violation of Vehicle Code section 23152, subdivision (a), driving with a blood alcohol level of 0.08 percent or greater, a misdemeanor. Upon accepting respondent's plea, the court found respondent guilty of the charged offense.

4. Imposition of sentence was suspended and respondent was placed on summary probation for a period of four years on certain terms and conditions, including inter alia, that respondent pay fines and fees totaling \$2,388, serve four days in the county jail, complete an 18-month second offender alcohol education program, and complete a Victim Impact Program sponsored by Mothers Against Drunk Driving. Respondent has thus far been in compliance with her probationary conditions. She has completed one year of her 18-month alcohol education program.

5. The facts and circumstances of the offense were that, on April 6, 2014, respondent drove her car after consuming alcoholic beverages. She failed to make a complete stop at a DUI checkpoint, coming to a stop approximately 20 feet beyond the checkpoint. Her blood alcohol concentration was 0.19 percent at the time of her arrest.

Prior Citation Issued to Respondent

6. In 2010, the Board issued Citation and Fine No. CI 2008 38675 to respondent in the amount of \$500 for violating Business and Professions Code section 4301, subdivisions (h) and (l). The citation was based on respondent's January 2009 conviction for driving with a blood alcohol content of 0.08 percent or greater, a misdemeanor. The facts and circumstances underlying this conviction were that, on October 10, 2008, respondent was stopped by a Highway Patrol Officer after he observed respondent driving on the wrong side of the freeway. Respondent was unable to successfully perform a series of field sobriety tests. During the booking procedure respondent submitted to a breath test, which indicated that respondent's blood alcohol concentration was 0.18 percent. Respondent suffered a similar conviction in 2001, for violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI).

7. Respondent testified that she has learned a valuable lesson since her 2014 arrest and subsequent conviction. She is taking her alcohol education classes seriously and testified that she will not drink and drive again because of the potential harm to the public and the risk of placing others in danger. She also testified that she learned similar lessons in similar programs following her first two arrests for drinking and driving.

8. Respondent has extensive experience working as pharmacist, which includes working at CVS Pharmacy. Respondent has also worked as a consultant pharmacist reviewing drug regimen interactions and ensuring that drug administrations for patients at health facilities were being properly monitored and administered. She has competently discharged her professional duties and responsibilities while working as a pharmacist, and has never been the subject of any work-related discipline. Since 2009, Novo Nordisk, Inc., has employed respondent as a Senior Medical Liaison, working with pharmacists, doctors, and hospitals, providing medical information on drugs for rare bleeding disorders, and informing health professionals on current clinical trials and developments. Novo Nordisk is multinational pharmaceutical company that manufactures and markets pharmaceutical products and services. Respondent is not required to maintain a pharmacist license as a condition of employment at Novo Nordisk, however, licensure is strongly preferred.

9. Respondent submitted a declaration delineating her job duties and requirements for her position. In her declaration, respondent stated that “[A] [d]octoral degree (e.g., DNP, MD, PharmD, or PhD) required with advanced professional licensure (e.g., NP, RPh) strongly preferred with a minimum two years’ experience in a health related system, pharmaceutical company, or managed care environment . . .” The declaration sets forth respondent’s employment duties in pertinent part as follows:

Maintain thorough understanding of all Novo Nordisk processes and procedures and proactively assists other FMA members to further their understanding of theses as needed.

Provide monthly reports on scientific support activities in region to the Director including budget expenditures as directed.

...

Attend assigned medical and scientific meetings: a) ensures and maintains awareness of current issues and new data pertaining to NNI [Novo Nordisk, Inc.] products; b) develops and maintains relationships with key health care providers and IHNs; c) develops appropriate use of NNI products and greater utilization of its services; d) supports and assists representatives and managers in answering questions from health care providers and IHNs.

Combine account management skills, business acumen, and scientific expertise to enhance value and develop collaborative relationships.

Connect health care and IHN providers with other NNI resources (e.g., Clinical Research Physicians, Sales and Marketing[]).

...

Identify academic centers and investigators to initiate and/or participate in clinical trials and identify key areas of future research.

...

Identify, respond to inquiries and develop relationships with health care professionals; identifying those individuals with novel research concepts, clinical experience and expertise, within identified therapeutic areas of interest to Novo Nordisk, Inc.

... Maintains a thorough working knowledge of NNI, its products, current scientific research, and publications associated with therapeutic area of interest.

Prepare and conduct ongoing product and scientific updates for the Region as requested.

...

Understand and adhere to legal and regulatory guidelines of pharmaceutical industry.

Conduct education for health care providers on subjects relevant to NNI's products as directed.

Coordinate and participate in the development of symposia and continuing education seminars for health care providers . . . on subjects relevant to Novo Nordisk products as directed.

10. Complainant submitted certification of costs of investigation and enforcement totaling \$3,007.50. This amount is reasonable under Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300 states in pertinent part:
 - (a) Every license issued may be suspended or revoked.
 - (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - (1) Suspending judgment.
 - (2) Placing him or her upon probation.
 - (3) Suspending his or her right to practice for a period not exceeding one year.
 - (4) Revoking his or her license.
 - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

2. Business and Professions Code 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 has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(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.

...

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

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

...

3. California Code of Regulations, title 16, section 1770, states that "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." Respondent's DUI convictions are substantially related to the qualifications, functions or duties of a pharmacist in that her DUIs evidence a potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety or welfare. Conduct occurring outside the practice of medicine may form

the basis for imposing discipline on a license because such conduct reflects on a licensee's fitness and qualifications to practice medicine. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771.) As was said of the licensee in that case, "Griffiths's three alcohol-related convictions are indications of alcohol abuse that affects his private life. We need not wait until his alcohol abuse problem begins to affect his practice of medicine." (*Id.*, at 773.) (See also *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.)

4. Grounds exist to suspend or revoke respondent's pharmacist license for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), based on respondent's conviction of a crime substantially related to the duties, functions and qualifications of a licensee, as set forth in Factual Findings 3, 4 and 5.

5. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h), based on respondent's conduct of using alcoholic beverages to an extent or in a manner dangerous or injurious to herself or others or the public, in that she operated a vehicle after consuming alcohol, as set forth in Factual Findings 3, 4 and 5.

6. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (k), based on respondent's 2009 and 2015 convictions for offenses involving the consumption of alcoholic beverages, as set forth in Factual Findings 3 through 6.

7. Grounds exist to order respondent to pay the Board \$3,007.50, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 10.

8. The Board has the responsibility to protect the public. In discharging this responsibility, the Board has promulgated disciplinary guidelines. (*Disciplinary Guidelines* (Rev. 10/2007); 16 C.C.R., § 1760.¹) Those guidelines set forth factors to be considered in determining the level of penalty to be imposed in a given case. (*Disciplinary Guidelines*, p. 3.) Although no single one or combination of the factors is required to justify the minimum or maximum penalty, the factors, and their impact in this matter, follow here:

a. *Actual or potential harm to the public:*

Respondent's actions in driving a vehicle while under the influence created a potential harm to the public.

b. *Actual or potential harm to any consumer:*

Respondent's conduct did not actually harm any consumer. Respondent's use of alcohol has the potential to affect consumers if she worked as a pharmacist (See *Griffiths*, supra.)

¹ In considering the factors listed in the Disciplinary Guidelines, the Board acknowledges that such factors encompass and expand on the rehabilitation criteria required to be considered when considering discipline based on a conviction pursuant to title 16, California Code of Regulations, section 1769, subsection (c).

c. *Prior disciplinary record, including level of compliance with disciplinary order(s):*

Respondent was the subject of a citation issued by the Board to respondent for a prior DUI conviction in 2009.

d. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s):*

Respondent received a prior citation as noted above and set forth in Factual Finding 6.

e. *Number and/or variety of current violations:*

Respondent's 2015 DUI conviction was the trigger for the Accusation in this matter. The facts and circumstances of that conviction are relevant, but also in so far as they create a pattern of misdemeanor convictions involving the use or consumption of alcohol.

f. *Nature and severity of the act(s), offense(s) or crime(s) under consideration:*

Respondent's misconduct created a potential for serious risk to the public. The pattern of misconduct is also warrants concern as well.

g. *Aggravating evidence:*

Respondent's blood-alcohol concentration at the time of her 2014 arrest was more than twice the legal limit. The facts and circumstances of her 2009 arrest reflected a similar blood-alcohol content. The fact that this was the third time respondent was arrested for driving under the influence is also a serious concern.

h. *Mitigating evidence:*

There was no mitigating evidence introduced at the hearing.

i. *Rehabilitation evidence:*

Respondent is making an effort at rehabilitation. However, her conviction is recent and not enough time has elapsed since the conviction to find rehabilitation.

j. *Compliance with terms of any criminal sentence, parole, or probation:*

Respondent is thus far in compliance with the terms and conditions of her criminal probation.

k. *Overall criminal record:*

Respondent has two prior DUI convictions occurring in 2001 and 2009; as noted above, these are of significant concern in that they reflect a pattern.

l. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code:*

There was no evidence presented that respondent's convictions have been dismissed pursuant to Penal Code section 1203.4.

m. *Time passed since the act(s) or offense(s):*

Respondent's last conviction occurred in January 2015 and is fairly recent.

n. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct:*

Respondent's conduct was intentional in that she made a decision to drive her vehicle after consuming alcohol, and that she did so after having been through two prior criminal rehabilitation programs, and previously received a citation for similar conduct.

o. *Financial benefit to the respondent from the misconduct:*

Respondent received no financial benefit from her misconduct.

9. In its Disciplinary Guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively minor offense with a minimum penalty of one-year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Violations of Business and Professions Code, subdivisions (a)-(h), (j) and (l)-(q) are listed as category II offenses for a pharmacist. (Disciplinary Guidelines, p. 13.) Violations of Business and Professions Code, subdivisions (i)-(k), and (o), are listed as category III offenses for a pharmacist. (Disciplinary Guidelines, p. 13.) The categories are not rigid and require some flexibility based on circumstances. For example, they assume a single violation of each listed statute or regulation, for multiple violations, the appropriate penalty may increase appropriately; if the violation falls into more than one category, the penalty considered should be from the higher category. (Disciplinary Guidelines, p. 1-5.)

As explained above, cause exists to discipline respondent for violation of Business and Professions Code section 4301, subdivisions (h), (k) and (l). As a result, respondent's 2015 DUI conviction is considered category III offense. Respondent has one prior DUI conviction in 2009, which resulted in a citation issued by the Board against respondent and warranted the charge of multiple misdemeanor violations involving the use or consumption of alcohol. Respondent's 2001 conviction occurred before she was licensed, but is considered in determining the appropriate discipline in this case. In consideration of all of the facts and circumstances of this case, the public would be adequately protected by placing respondent on probation for a period of three years under conditions, which should include conditions that address her history of DUIs, such as abstention from alcohol/drug use and random biological testing. While three DUIs in 16 years does not prove that respondent is an alcoholic or suffers alcohol from chemical dependency,

it does present sufficient concern to impose the aforementioned optional conditions. Particularly in the field of pharmacy, such potential abuse warrants strict monitoring. Respondent is currently participating in a court-ordered 18-month alcohol rehabilitation program, but that program does not provide the Board the same oversight and protection provided by the Board's Pharmacists Recovery Program (PRP). The Board's PRP provides monitoring and analysis with feedback to the board consistent with Business and Professions Code section 315 et seq. and the Uniform Standards established by the Substance Abuse Coordination Committee.

Is Respondent's Current Employment the Practice of Pharmacy?

10. It is noted that Condition 13 of the Board's standard conditions of probation for a pharmacist requires a licensee on probation to be "employed as a pharmacist in California for a minimum of hours per calendar month in California." (*Disciplinary Guidelines*, pp. 19-42.) Further, probation is to be tolled for every month that a respondent does not satisfy this condition. In addition, Condition 13 provides that a licensee's probation shall not be tolled for a period exceeding 36 months. (*Disciplinary Guidelines*, p. 26.)

11. Condition 6 of the standard probationary conditions addresses notice to employers, and defines employment as a pharmacist as follows:

"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. (*Disciplinary Guidelines*, p. 24.)

12. Business and Professions Code section 4050 states, in pertinent part:

(b) Pharmacy practice is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. Pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities.

(c) The Legislature further declares that pharmacists are health care providers who have the authority to provide health care services.

13. Pursuant to Business and Profession Code section 4051, a pharmacist may provide clinical advice, services, information, or patient consultation only if these services are: (1) provided to a health care professional or to a patient; (2) the pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice; and (3) the pharmacist has access to the information described in number (2) is secure from unauthorized access and use.

14. Respondent contends that her Senior Medical Liaison position with Novo Nordisk should qualify as "practicing pharmacy" within the meaning of Business and Professions Code section 4050. Based on this contention, respondent asserts that her current employment should

satisfy standard Condition 13 of the Board's conditions of probation. Respondent, in discharging her duties as a Senior Medical Liaison, consults with health care professionals in a general sense in that she provides information on drugs and medications, and other products manufactured by Novo Nordisk. She also informs health professionals on current clinical trials, developments and research. In addition, respondent's job requires her to have knowledge of legal and regulatory guidelines governing the pharmaceutical industry. Other job requirements include a doctoral degree, which includes, inter alia, a Doctor of Pharmacy. A professional license is not required but is "strongly preferred." Respondent testified that she has not actively practiced pharmacy since 2012 or 2013. (RT, p. 36, l. 3.)

15. The determination of what is considered the practice of pharmacy has been made by the Legislature in enacting section 4050. This statute defines the practice of pharmacy in the traditional sense of preparing and dispensing drugs to patients to improve their health. The definition also provides that a pharmacist may engage in "communication[s] for clinical and consultative purposes." Section 4051 provides further details on the meaning of this phrase by explaining that any communication, clinical advice, or consultation to a health care professional is patient specific and requires the pharmacist to "have access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice." Therefore, section 4050, in conjunction with section 4051, does not support respondent's contention that her current employment, which includes communications and consultations with health care professionals in a general sense, qualifies as the practice of pharmacy. Further, respondent did not present expert testimony that would establish that respondent's current employment amounts to the practice of pharmacy. Although section 4050 states that the practice of pharmacy is continually evolving, in this case there is an insufficient factual basis or legal authority to expand the definition of the practice of pharmacy to include respondent's employment functions and duties as a Senior Medical Liaison for Novo Nordisk.

16. As noted in Legal Conclusion 6, the appropriate discipline is revocation stayed under conditions. Respondent's current employment will not satisfy Standard Condition 13. Respondent is understandably concerned that she will have to resign from a job she enjoys and has held for seven years, and obtain work as a pharmacist in order to satisfy Condition 13. However, Condition 13 does not set forth a specific amount of minimum monthly hours, but allows the board flexibility in requiring the appropriate number of hours in each case. An appropriate solution to this problem is to impose a reasonable number of hours in the practice of pharmacy that would still allow respondent to keep her full-time employment with Novo Nordisk. In this case, 32 hours of employment per month is appropriate to allow the board to monitor her performance in the practice of pharmacy. "Employment" will have the same meaning as described in standard Condition 6.

ORDER

Pharmacist's License No. RPH 52687, issued to respondent Maria Lage, is revoked; however, the revocation is stayed and respondent is placed on probation for three 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; and/or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist's 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 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 5422 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause 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 5422, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 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 5422 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 her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in case number 5422 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 \$3,007.50. Respondent shall make said payments as directed by the board or its designee.

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

The filing of bankruptcy by respondent shall not relieve respondent of 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

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 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 her 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 32 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 32 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 32 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 32 hours as a pharmacist as defined by Business and Professions Code section 4000 *et seq.*

14. Random Drug Screening (including Alcohol)

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug or alcohol 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 any 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 any 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 the terms of this provision is a violation of probation.

15. Abstain from Drugs and Alcohol Use

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

16. 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 any 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 any 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 any 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. Violation of Probation

If a 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.

18. Completion of Probation

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

This Decision shall become effective at 5:00 p.m. on January 11, 2017.

It is so ORDERED on December 12, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Amy Gutierrez, Pharm.D.
Board President