

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

In the Matter of the Accusation Against:

BRANDON L. IACOBO

Pharmacist License Number RPH 64631

Respondent.

Case No. 5595

OAH No. 2016031013

DECISION AND ORDER

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

This decision shall become effective at 5:00 p.m. on 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

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

In the Matter of the Accusation Against:

BRANDON L. IACOBO,

Pharmacist License Number RPH 64631

Respondent.

Case No. 5595

OAH No. 2016031013

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 31, 2016, in Sacramento, California.

Kristina T. Jarvis, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Brandon L. Iacobo represented himself and appeared by telephone from Des Moines, Iowa. He was assisted by attorney Michael M. Sellers of the law firm Sellers & Haraldson.

Evidence was received, the record was closed, and the matter was submitted for decision on October 31, 2016.

SUMMARY

Complainant seeks to discipline respondent's license to practice pharmacy based on his violations of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) by using controlled substances or dangerous drugs to an extent or in a manner dangerous or injurious to himself or others, and possessing controlled substances without a valid prescription. Cause for discipline exists based on the latter grounds only. When all relevant evidence is considered, respondent did not introduce sufficient evidence of his continued ability to perform the duties of a licensed pharmacist in a manner consistent with public health, safety, and welfare, even on a probationary basis. Therefore, his license should be revoked.

FACTUAL FINDINGS

Procedural Background

1. The Board issued Original Pharmacist License Number RPH 64631 to respondent on September 9, 2010. The license expires December 31, 2017, unless renewed or revoked. There is no history of prior discipline of the license.

2. On December 22, 2015, complainant signed the Accusation solely in her official capacity. The Accusation seeks to discipline respondent's license to practice pharmacy based upon his self-administration of the controlled substances and dangerous drugs hydrocodone, codeine, clonazepam, lorazepam, alprazolam, phenobarbital, and butalbital to an extent or in a manner dangerous or injurious to himself or others. Complainant also alleged respondent possessed those controlled substances without a valid prescription.

The Events of January 23, 2015

3. On January 23, 2015, officers from the San Francisco Police Department responded to a two-car accident in which respondent rear-ended another driver stopped at a traffic signal. Officer Vong spoke with respondent to find out what happened. Respondent told him, "I was driving straight, looked down at my radio, and then I rear-ended the other driver. I did not see him." While speaking with respondent, Officer Vong noticed a strong smell of mouthwash on respondent's breath, his eyes were bloodshot and dilated, and his speech was slow and slurred. He was unable to have respondent perform any field sobriety tests at the scene because respondent was transported to the hospital by ambulance.

4. Officer Vong went to the hospital to continue his interview of respondent. Upon his arrival, Officer Vong noticed respondent's speech was still slurred, his face was flushed, his eyes were bloodshot and dilated, his tongue was sticking out, and he was falling asleep every few minutes. Officer Vong spoke with the police officer who accompanied respondent in the ambulance, and that officer stated respondent had been exhibiting the same symptoms during the 15 minutes prior to Officer Vong's arrival at the hospital.

5. Respondent denied having consumed any alcohol prior to the accident, and told Officer Vong he was tired because he had just completed a 12-hour shift at work after having slept only six hours. Respondent admitted to having taken bupropion, venlafaxine, hydrocodone, and alprazolam prior to the accident, but denied that any of those medications affected his ability to drive. He did admit, however, that alprazolam could cause slurred speech, flushed face, dilated and bloodshot eyes, and sleepiness.

6. Officer Vong formed the opinion that respondent had driven his vehicle while under the influence of drugs, and arrested him. A subsequent analysis of a sample of respondent's blood showed the presence of hydrocodone, codeine, clonazepam, lorazepam,

alprazolam, phenobarbital, and butalbital.¹ Respondent eventually pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving a vehicle while under the influence of drugs.²

The Board's Investigation

7. Respondent disclosed the January 23, 2015 accident to the Board in his application to renew his license. The matter was assigned to Hilda Nip, a Board inspector, for investigation. As part of her investigation, she ordered a Controlled Substance Utilization Review & Evaluation System (CURES)³ report for respondent's wife for the time period of January 1, 2000, through January 31, 2015. Ms. Nip was trying to confirm whether respondent's wife had in fact been prescribed any of the drugs found in respondent's system on January 23, 2015. The report indicated respondent's wife last filled a prescription for lorazepam on October 15, 2014, and did not show prescriptions for any of the other drugs found in respondent's system.

8. Ms. Nip also ordered a CURES report for respondent for the same time period. However, no information was found for him, which she explained at hearing meant he did not fill any prescriptions in California for a drug listed as a controlled substance on Schedules II through IV. Therefore, she concluded he did not have a valid prescription for any of the drugs found in his system on January 23, 2015.

¹ The test results revealed the presence of .01 mg/L of hydrocodone, 21 ng/mL of codeine, 15 ng/mL of clonazepam, 15 mg/L of phenobarbital, and 1.8 mg/L of butalbital in respondent's blood. The results also showed the presence of lorazepam and alprazolam in an amount "below the Limit of Quantitation." There was no evidence the amounts of the drugs found in respondent's blood, either individually or collectively, was dangerous or injurious to him or others.

² Contrary to respondent's argument, complainant did not allege the criminal conviction as a basis for discipline.

³ CURES is a computer database that stores information about each prescription for a Schedule II, III, and IV controlled substance dispensed in California. The information stored includes the patient's name, date of birth, and address; the prescriber's name and DEA number; the pharmacy's name and license number; the date the prescription was dispensed; the prescription number; the drug name; the quantity and strength; and the number of refills remaining for each prescription. Every person or entity who dispenses a Schedule II through IV controlled substance in California is required to submit such information to the database. A user of the system may print a report, sorting the information reported by the pharmacy that dispensed the medication, the physician that prescribed it, or the patient for whom it was prescribed.

9. Respondent disclosed the following in his July 21, 2015 correspondence to the Board:

I began seeking psychiatric help in early 2011 for a lifelong struggle with social anxiety and depression at the Langley-Porter Psychiatric Institute at UC San Francisco. Over the years, I was prescribed different courses of anti-depressants, including Celexa, Lexapro, Wellbutrin XL, and Effexor XR.⁴ During October 2014, my anxiety had severely worsened due to stress at work and failing to reach company expectations. For health reasons, I requested a temporary leave of absence. I was still under psychiatric care at the time (monthly appointments only) but I did not fully divulge the severity of my depression and anxiety to my doctor or family members due to embarrassment. During my leave of absence, the lack of activity and deep feelings of failure brought me to attempt to self-medicate my conditions. I occasionally took some medication from my wife's old prescriptions without her knowledge whatsoever since she no longer actively took those medications. These medications included pain relievers from a previous ankle injury in 2014 and an expired small amount of benzodiazepines (please see attached pharmacy records. The benzodiazepine prescription is beyond the date range available.) I would also occasionally take Phenobarbital that was prescribed for my dog for seizures in an attempt to lessen my anxiety on particularly stressful days (please see attached pharmacy records).

10. With specific regard to the January 23, 2015 accident, respondent stated he had taken his wife's alprazolam and hydrocodone, as well as his dog's phenobarbital, prior to the accident. He explained he admitted himself into the inpatient unit of the Langley-Porter Psychiatric Institute due to suicidal thoughts after the accident. Four days later, he was transferred to a four-week Partial Hospitalization Program, which involved daily group Dialectical Behavioral Therapy and individual counseling sessions with a psychiatrist.

Controlled Substances and Dangerous Drugs

11. Hydrocodone is a Schedule II controlled substance, and codeine is a Schedule III controlled substance. (Health & Saf. Code, §§ 11055, subd. (b)(1)(I); 11056, subd. (e)(2).) Alprazolam, clonazepam, lorazepam, and phenobarbital are each a Schedule IV controlled substance. (Health & Saf. Code, § 11057, subd. (d)(1), (7), (16), & (26).) Each of the aforementioned drugs is also a "dangerous drug" pursuant to Business and Professions Code section 4022.

⁴ None of these drugs was found in respondent's blood on January 23, 2015.

12. Complainant offered no evidence that butalbital is classified as a controlled substance in the State of California. Nor did she introduce any evidence that the drug qualifies as a "dangerous drug" under Business and Professions Code section 4022.

Respondent's Evidence

13. Respondent obtained his Doctor of Pharmacy from the College of Pharmacy, The University of Rhode Island. He first began working for CVS Pharmacy as an intern while attending pharmacy school in 2005. He became the pharmacist-in-charge of a CVS Pharmacy in the Bay Area upon obtaining his California license. He was the pharmacist-in-charge of a CVS Pharmacy in Foster City at the time of the accident discussed above.

14. Respondent took a six-month leave of absence from CVS Pharmacy after the accident, during which he and his wife relocated to Iowa City, Iowa, because she was accepted into the medical residency program at the University of Iowa Hospitals and Clinics. He obtained his license from the Iowa Board of Pharmacy on July 25, 2015, after which he returned from his leave of absence to a CVS Pharmacy in Waterloo, Iowa. He has worked as a staff pharmacist at that location since then. He has no intention of relocating back to California, but that could change depending on his wife's medical education and future career.

15. At hearing, respondent asked that this matter be dismissed because he has been accepted into the Iowa Board of Pharmacy's Pharmacists Recovery Program, which he explained is similar to the California Board's program with the same name. He also explained he contacted the California Board and inquired about its Pharmacists Recovery Program prior to relocating to Iowa, but was told it was unknown whether he would qualify for the Program since he was leaving California. Therefore, he did not bother applying for California's Program.

16. Respondent testified consistently with his July 21, 2015 correspondence to the Board discussed above. In addition to admitting taking his wife's and dog's prescription medications, he also admitted taking other family members' prescription medications. He explained he is still receiving treatment for anxiety from a psychiatrist and a therapist in Iowa.

17. Respondent also explained he has never disclosed his self-administration of medications prescribed to others or the January 23, 2015 accident to anyone at CVS Pharmacy. Nonetheless, he introduced a letter written by CVS District Supervisor William Baker as evidence of his good character. Mr. Baker wrote, in part:

I can state with no hesitation whatsoever that if there had ever been any concerns or complaints of any kind involving pharmacist Brandon Iacobo in his more than one year of employment at our Waterloo pharmacy, I would have known about it. Not only have there never been any problems or

complaints, but to the contrary, I can state that Brandon has been and is a reliable, responsible, professional pharmacist and that we are pleased to have him working for us at that location.

Discussion

18. There was insufficient evidence to establish respondent self-administered a controlled substance or a dangerous drug to an extent or in a manner dangerous or injurious to himself or others on January 23, 2015. While the evidence established he consumed hydrocodone, codeine, clonazepam, lorazepam, alprazolam, and phenobarbital prior to the accident, there was no evidence of the number of tablets consumed or over what period of time they were consumed. And while subsequent analysis of a sample of his blood showed the presence of each of those drugs at the time of the accident, there was no evidence that the amount detected was sufficient to render any one of those drugs, by itself or in combination with others, dangerous or injurious to respondent or others. The fact that respondent was convicted of driving under the influence of drugs does not establish otherwise, because his conviction was based on his no contest plea. (Pen. Code, § 1016, subd. (3) [a no contest plea to a crime not punishable as a felony “may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based”]; *County of Los Angeles v. Civil Service Commission of Los Angeles County* (1995) 39 Cal.App.4th 620, 627 [Pen. Code, § 1016, subd. (3)’s, prohibition applies equally to administrative proceedings].)

19. An analysis of a sample of respondent’s blood revealed the presence of hydrocodone, codeine, clonazepam, lorazepam, alprazolam, and phenobarbital on January 23, 2015. Each of those drugs is classified as a controlled substance in the State of California.⁵ Respondent did not refute that evidence, and he admitted taking his wife’s hydrocodone and alprazolam and his dog’s phenobarbital on the day of the accident. He also admitted taking other family members’ prescription medications, although he did not specify when. Ms. Nip’s testimony that there is no CURES report for respondent during the relevant timeframe established he did not have a valid prescription for any of the controlled substances found in his system. Therefore, the evidence established respondent possessed controlled substances without a valid prescription on January 23, 2015.

Disciplinary Guidelines

20. The Board has adopted disciplinary guidelines for consideration when determining the appropriate discipline to impose for a violation of the Pharmacy Law. (Cal. Code Regs., tit. 16, § 1760.) The guidelines categorize different violations of the Pharmacy Law into one of four categories, and recommends a range of discipline for each. Possession of a controlled substance without a valid prescription can be a Category II or Category III violation. The recommended discipline for the former category ranges from revocation

⁵ While the blood test also revealed the presence of butalbital, there was no evidence that the drug is classified as a controlled substance in the State of California.

stayed, three years' probation, all standard terms and conditions, and all appropriate optional terms and conditions to outright revocation. And the recommended discipline for the latter category ranges from revocation stayed, 90-day actual suspension, three to five years' probation, all standard terms and conditions, and all appropriate optional terms and conditions to outright revocation. Two standard terms and conditions imposed for all terms of probation offered by the Board are: 1) the licensee shall appear in person for interviews with the Board or its designee upon request and at such frequencies as are determined by the Board or its designee; and 2) the term of probation shall be tolled for those periods of time during which the licensee does not work at least a specified number of hours as a pharmacist in California.

21. The Board's disciplinary guidelines also specify criteria for consideration when determining the specific discipline to impose for the particular category violated. One such criterion which is relevant here is the existence of any aggravating factors. Respondent has a history of self-medicating by taking prescription medication belonging to other family members and his dog. While he testified candidly and openly about that history, he also admitted he has not told anyone at CVS Pharmacy about his history. Such reluctance to make full disclosure raises concerns about his ability and willingness to fully recognize the wrongfulness of his past misconduct. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940-941 [petitioner's unwillingness to seek evaluation and treatment of a possible substance abuse problem was indicative of his unwillingness to acknowledge the wrongfulness of his past conduct, an essential element of rehabilitation].)

22. Additionally, respondent introduced a letter written by his supervisor at CVS Pharmacy as evidence of his good character. His willingness to ask his supervisor to author a character reference letter without first disclosing his substance abuse history to the supervisor was deceitful and, therefore, constitutes further evidence of his inability to fully recognize and accept the wrongfulness of his past misconduct.

Summary

23. Complainant failed to establish by clear and convincing evidence the existence of cause to discipline respondent's license based upon his alleged self-administration of controlled substances or dangerous drugs to an extent or in a manner dangerous or injurious to himself or others, for the reasons explained further in the Legal Conclusions. She did, however, establish by clear and convincing evidence the existence of cause to discipline respondent's license based on his possession of the controlled substances hydrocodone, codeine, clonazepam, lorazepam, alprazolam, and phenobarbital without valid prescriptions.

24. When all relevant evidence is considered, respondent failed to demonstrate his continued ability to perform the duties of a pharmacist in a manner consistent with public health, safety, and welfare, even on a probationary basis. As a licensed pharmacist, he would have unfettered access to numerous controlled substances, including those he previously stole from family members and his dog, and consumed. His failure to fully acknowledge the wrongfulness of his past misconduct is evidence that he cannot be trusted with unsupervised

access to those drugs. And respondent's willingness to ask Mr. Baker to serve as a character witness, without fully disclosing his past, raises concerns with his ability to be open and forthright with a probation monitor. Additionally, his lack of intention to return to California makes probation impractical. Therefore, respondent's license to practice pharmacy should be revoked.

Costs of Investigation and Enforcement

25. Complainant has requested costs of investigation and enforcement in the total amount of \$4,719 pursuant to Business and Professions Code section 125.3. This amount consists of costs incurred directly by the Board (\$39), as well as costs incurred by the Office of the Attorney General and billed to the Board (\$4,680). At hearing, complainant introduced a Certification of Costs of Investigation By Agency Executive Officer in Case No. 5595 in support of the costs incurred directly by the Board. The Certification explains that the Board incurred costs in the amount of \$39 for obtaining a certified copy of a report on respondent from the San Francisco Medical Examiner, and includes a copy of the receipt.

Complainant also introduced a Certification of Prosecution Costs: Declaration of Kristina T. Jarvis. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the total amount of \$4,680. Complainant explained the costs incurred by the Office of the Attorney General and billed to the Board were increased by respondent's numerous motions for a continuance and the parties' settlement efforts prior to hearing.

26. Respondent did not introduce any evidence of his inability to pay costs. He testified he has worked as either a pharmacist-in-charge or a staff pharmacist at a CVS Pharmacy since obtaining his license from the Board in 2010.

27. The entire amount of costs requested by complainant is reasonable as explained further in Legal Conclusion 6 below.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856 [the standard of proof applicable to proceedings for the discipline of professional licenses is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and

convincing proof demands a *high probability* [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Cause for Discipline

2. A license to practice pharmacy in the State of California may be disciplined if the licensee has engaged in unprofessional conduct. Unprofessional conduct includes the self-administration of a controlled substance or a dangerous drug to the extent or in a manner dangerous or injurious to oneself or another person. (Bus. & Prof. Code, § 4301, subd. (h).) There was insufficient evidence of respondent’s self-administration of a controlled substance or a dangerous drug to the extent or in a manner dangerous or injurious to himself or others on January 23, 2015, for the reasons explained in Factual Findings 6, 11-12, 18, and 23. Therefore, no cause exists pursuant to Business and Professions Code section 4301, subdivision (h), to discipline his license to practice pharmacy.

3. Unprofessional conduct also includes any violation of the Pharmacy Law. (Bus. & Prof. Code, § 4301, subd. (o).) Business and Professions Code section 4060 prohibits a person from possessing a controlled substance, unless it was furnished pursuant to a valid prescription. Respondent possessed the controlled substances hydrocodone, codeine, alprazolam, clonazepam, lorazepam, and phenobarbital without valid prescriptions on January 23, 2015, as discussed in Factual Findings 5 through 11, 16, 19, and 23. Therefore, cause exists to discipline his license to practice pharmacy pursuant to Business and Professions Code section 4301, subdivision (o), as that statute relates to Business and Professions Code section 4060.

Conclusion

4. Cause exists to discipline respondent’s license to practice pharmacy for the reasons explained in Legal Conclusion 3 only. When all relevant evidence is considered, respondent failed to demonstrate his continued ability to perform the duties of a pharmacist in a manner consistent with public health, safety, and welfare, even on a probationary basis, for the reasons explained in Factual Findings 13 through 17, 20 through 22, and 24. Therefore, his license should be revoked.

Award of Costs

5. Business and Professions Code section 125.3 provides, in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to

exceed the reasonable costs of the investigation and enforcement of the case.

[¶] ... [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed

discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

6. Complainant submitted prima facie evidence of the reasonableness of the amount of costs of investigation and enforcement requested as explained in Factual Finding 25. (Bus. & Prof. Code, § 125.3, subd. (c).) Respondent failed to rebut that evidence. (Factual Finding 26.) Therefore, costs of investigation and enforcement in the total amount of \$4,719 are reasonable, and are awarded as set forth below.

ORDER

1. Original Pharmacist License Number RPH 64631 issued to respondent Brandon L. Iacobo is REVOKED.

2. Respondent shall reimburse the Board for its costs of investigation and enforcement in the amount of \$4,719.

DATED: November 14, 2016

DocuSigned by:

Coren D. Wong

F42876F6E768481...

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5595

12 **BRANDON L. IACOBO**
13 **3462 Donegal Ct.**
Iowa City, IA 52246

A C C U S A T I O N

14 **Pharmacist License No. RPH 64631**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 9, 2010, the Board of Pharmacy issued Pharmacist License
22 Number RPH 64631 to Brandon L. Iacobo (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December 31,
24 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a) of the Code states that "[e]very license issued may be
2 suspended or revoked."

3 5. Section 4300.1 of the Code states:

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

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

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

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

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

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

23 "A person shall not possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician..."

25 8. Section 4022 of the Code states

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

28 ///

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

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

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

8 DRUGS

9 9. Health and Safety Code section 11055, subdivision (b)(1)(I) specifies that
10 Hydrocodone is a Schedule II controlled substance.

11 10. Health and Safety Code section 11056, subdivision (e)(2) specifies that Codeine is a
12 schedule III controlled substance.

13 11. Health and Safety Code section 11057 specifies that the following substances are
14 schedule IV controlled substances:

- 15 a. (d)(1) Alprazolam.
- 16 b. (d)(7) Clonazepam.
- 17 c. (d)(16) Lorazepam.
- 18 d. (d)(26) Phenobarbital.

19 COST RECOVERY

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

24 ///
25 ///
26 ///
27 ///
28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substances and Dangerous Drugs)

3 13. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
4 section 4301, subdivision (h), in that on or about January 23, 2015, Respondent self-administered
5 controlled substances and dangerous drugs to an extent or in a manner to be dangerous to himself
6 or others. The circumstances are as follows:

7 14. On or about January 23, 2015, Respondent was driving a vehicle on a public roadway
8 when he failed to stop at a red traffic light and collided with the vehicle in front of him.
9 Respondent was suspected of being intoxicated and a blood test was performed. The blood test
10 was positive for Hydrocodone, Codeine, Clonazepam, Lorazepam, Alprazolam, Phenobarbital, and
11 Butalbital.

12 15. Respondent admitted to self-administering controlled substances and dangerous drugs
13 that he obtained from his wife without her knowledge, mostly expired prescriptions, and from his
14 dog's prescription for Phenobarbital. Respondent was not prescribed any of the substances
15 determined to be in his system by the blood test.

16 SECOND CAUSE FOR DISCIPLINE

17 (Possession of Controlled Substances)

18 16. Respondent is subject to disciplinary action for unprofessional conduct under section
19 4301, subdivision (o), in that Respondent violated section 4060 by possessing controlled
20 substances for which he did not have a valid prescription. The circumstances are as set forth in
21 paragraphs 13-15, above.

22 PRAYER

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

25 1. Revoking or suspending Pharmacist License Number RPH 64631, issued to Brandon
26 L. Iacobo;

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

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

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

DATED: 12/22/15 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SA2015105221
12053308.docx