

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

In the Matter of the Statement of Issues Against:

TERI LYNN GILBERT,

Pharmacist License Applicant

Respondent.

Case No. 5984

OAH No. 2017020194

**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 August 24, 2017.

It is so ORDERED on July 25, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 16, 2017, in San Diego, California.

Harinder K. Kapur, Deputy Attorney General, Department of Justice, represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

Kevin C. Murphy, Attorney at Law, represented Teri Lynn Gilbert, respondent.

The matter was submitted on May 16, 2017.

**SUMMARY**

Respondent was disciplined in Washington State in 2011 and 2016 for unprofessional conduct because she dispensed a controlled substance to herself in 2009 and dispensed drugs requiring a prescription to hospital staff without physician approval in 2014. Because of that discipline, her application for a pharmacist license is subject to denial. Respondent presented evidence that she is sufficiently rehabilitated to warrant the issuance of a probationary license with appropriate terms and conditions to ensure public protection.

**FACTUAL FINDINGS**

1. On March 20, 2016, respondent submitted an application for a Pharmacist License with the board. In this application, she certified under penalty of perjury to the

truthfulness of all statements, answers, and representations in her application. On July 26, 2016, the board denied her application.

2. On November 2, 2016, complainant filed the statement of issues in her official capacity. The statement of issues alleges that respondent's license application should be denied under Business and Professions Code sections 480, subdivision (a)(1), and 4301, subdivision (n), because her pharmacist license was subject to discipline in the State of Washington in 2011 and 2016.

#### *The 2011 Washington State Discipline*

3. On August 12, 2011, the State of Washington, Department of Health, Board of Pharmacy, imposed "informal discipline" against respondent's pharmacist credential based on respondent's stipulation as set forth in a document entitled *Stipulation to Informal Disposition*, Case No. M2011-23. As a result of this stipulation, respondent's pharmacist credential was placed on probation for two years, respondent was required to reimburse the Washington Board of Pharmacy \$1,000 for costs, she was barred from serving as a preceptor or supervising pharmacy interns, and she was required to provide the stipulation to her current or future employers.

#### *Facts and Circumstances of the 2011 Discipline*

4. As the basis for the imposition of discipline against respondent's license, the Washington Board identified the following factual allegation:

On or about May 16, 2009, the Respondent was working at a pharmacy in Yakima, Washington. Respondent was the only pharmacist on duty on that date. While working as the sole pharmacist, Respondent self-filled her own prescription for a Schedule III controlled substance.

In the stipulation, respondent did not admit to the allegations. As informal disposition, the parties agreed that it would not be construed as a finding of unprofessional conduct or inability to practice. Respondent acknowledged that the allegation, if proven, would constitute grounds under Revised Code of Washington section 18.130.180, subdivision (7), "via a violation of" section 69.50.308, subdivision (3)(1).<sup>1</sup> At the hearing in this matter, respondent did not dispute that she dispensed the controlled substance to herself.

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<sup>1</sup> Revised Code of Washington section 18.130.180, subdivision (7), defines professional conduct to include "Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice." In turn, section 69.50.308, subdivision (3)(1), provides that "(a)n individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use."

In accepting the imposition of informal discipline, the Washington Board considered the following mitigating factors: Respondent had a valid prescription for the substance in question and she utilized a pharmacy technician to witness the dispensing of the substance.

Respondent complied with the terms of probation the Washington Board imposed.

#### *The 2016 Washington State Discipline*

5. On January 12, 2016, the State of Washington, Department of Health, Pharmacy Quality Assurance Commission, accepted the imposed “informal discipline” against respondent’s pharmacist credential based on respondent’s stipulation as set forth in a document entitled *Stipulation to Informal Disposition*, Case No. M2015-284.<sup>2</sup> As a result of this stipulation, respondent agreed to surrender her pharmacist credential, agreed not to resume practice as a pharmacist in Washington, and stipulated that her credential is not eligible for reinstatement in the future, among other terms and conditions. The Commission cited Washington Administrative Code section 246-16-800, subdivision (2)(b)(iii), as permitting “the surrender of a credential when the license holder is at the end of his or her effective practice and surrender alone is enough to protect the public. The license holder must agree to retire and not resume practice.” The Commission determined that permanent surrender was an appropriate sanction in respondent’s case.

#### *Facts and Circumstances of the 2016 Discipline*

6. As the basis for the imposition of discipline against respondent’s license, the Washington Commission identified the following factual allegation:

Respondent was working as a pharmacist at Kittitas Valley Hospital in Ellensburg, Washington. On or about March 2014, during a staff meeting, respondent stated that she had given the legend drugs<sup>3</sup> Floricet (acetaminophen, butalbital and caffeine) to staff nurses when they had headaches. On October 21, 2014, respondent told a Department of Health investigator, that she “diverted and/or delivered to other staff without prescriptions the legend drugs Floricet, Imitrex (sumatriptan) and Naproxen.”

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<sup>2</sup> The Washington State Board of Pharmacy imposed the 2011 informal discipline while the Washington State Pharmacy Quality Assurance Commission imposed the 2015 discipline. The change in disciplining authority appears to be due to an administrative restructuring. The statement of issues incorrectly identified the Pharmacy Quality Assurance Commission as imposing the 2011 discipline.

<sup>3</sup> “‘Legend drugs’ means any drugs that are required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only.” (Wash. Admin. Code, § 246-933-530, subd. (a)(1).) Thus, Legend drugs are “dangerous drugs” under Business and Professions Code section 4022. Respondent did not dispute that Floricet and Imitrex are legend or dangerous drugs.

In the stipulation, respondent did not admit to the allegations. As informal disposition, the parties agreed that it would not be construed as a finding of unprofessional conduct or inability to practice. Respondent acknowledged that the allegation, if proven, would constitute grounds under Revised Code of Washington section 18.130.180, subdivisions (1), (6), and (7), and (23)(c), and 18.64.160, subdivision (3).<sup>4</sup> At the hearing in this matter, respondent did not dispute that she dispensed the medications.

### *Respondent's Testimony and Character and Other Evidence*

7. Respondent obtained a Bachelor of Science degree in pharmacy in 1996 from the University of Washington and was licensed in Washington State from 1996 to 2015, when she surrendered her license as addressed above. She was also licensed in Nevada as a pharmacist from 1996 to 2016. She started working in the pharmacy field in 1991 when she worked as a pharmacy technician. After she became a licensed pharmacist she worked in retail pharmacy until 2004. After this she moved to central Washington, a rural part of the state, and worked as a hospital pharmacist at Kittitas Valley Hospital from 2011 to 2014. At Kittitas Valley Hospital, respondent became the Clinical Pharmacist within the acute care setting.

In 2015 she moved to southern California to be closer to family. For the last two years, until recently, she worked as a clinical manager at St. Joseph Health in Humboldt County doing contract work writing medication policies and protocols for drug utilization and formulary management for St. Joseph Health. In this capacity, respondent worked under the direct supervision of the Pharmacy Operations Manager at Petaluma Hospital, Matthew Saucedo, Pharm. D.

Respondent did not dispute the bases of discipline imposed against her Washington pharmacist license. She admitted that she dispensed a Schedule III controlled substance to herself in 2009, and she dispensed the legend drugs Floricet, Imitrex and Naproxen to hospital staff in 2015.<sup>5</sup>

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<sup>4</sup> Revised Code of Washington section 18.130.180 includes the following acts as unprofessional conduct: under subdivision (1), "(t)he commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. . ."; under subdivision (6), "[except as authorized] the possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law; and under subdivision (23)(c) the "(c)urrent misuse" of "legend drugs." Section 18.64.160, subdivision (3), authorizes the Commission to take disciplinary action against the license of any pharmacist who "knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation governing the possession, use, distribution, or dispensing of drugs. . ."

<sup>5</sup> Naproxen is not a legend drug. It is an over the counter medication.

Respondent, however, asserted that the practice of dispensing controlled substances to hospital staff was a "common practice" and her conduct constituted "minor technical violations." She explained that there was an "unwritten practice" that nurses and physicians could get "maintenance based meds" and under this "unwritten policy" she gave them tablets. Respondent added that the area was a "gray area." She explained that pharmacists may provide a patient who runs out of his or her maintenance medications for up to 72 hours when they have a relationship with the pharmacist and the pharmacist dispensed the medication previously. Maintenance medications include medications to control high-blood pressure and other chronic conditions. Respondent did not offer evidence that the medications she dispensed, specifically the Floricet and Imitrex, which are for severe headaches, were maintenance medications, or that she had a relationship with the staff to whom she dispensed the medications, or that she had dispensed the medications previously to them.

Respondent, further, stated that circumstances at the hospital justified her dispensing the medications to staff. At the time, respondent said that nurses were on strike and the hospital was finding it hard to get nurses to work. Thus, by dispensing the medications she did, she believed that she was helping the hospital keep staff during this period.

In the "Statement of Explanation" she submitted to the board as part of her application, respondent detailed the circumstances that resulted in the Pharmacy Quality Assurance Commission becoming aware of her dispensing medications to staff. She stated that she became Interim Director of Pharmacy at Kittitas and after she assumed this role, "(a)ccountability and responsibility for past practices prior to and during [her] brief tenure were quickly attributed to [her] as outgoing Interim Director of Pharmacy." Due to her past Washington board sanction, her conduct relating to the dispensing of the medications to staff was reported to the Pharmacy Quality Assurance Commission.

Regarding the 2009 conduct, respondent explained that she was in pain from an injury and was concerned that she would not have the medication she needed. The medication was Norco, a Schedule III controlled substance. At the time she was working at the hospital as a locum tenens and was scheduled to work on a weekend. Before she began working her shift, she said she telephoned the pharmacy and expected the prescription to be refilled. Respondent discovered that the prescription had not been refilled. She wrote in the "Statement of Explanation," the following regarding the facts and circumstances of her 2009 conduct:

I was the lone pharmacist that day as it was a weekend. My technician contacted the prescribing physician for an okay to refill, filled the prescription with the automatic dispensing cabinet (Baker), and labeled the prescription. My pharmacy assistant witnessed the filling of the medication and all three of us signed off on the prescription refill and purchasing of the medication. I made sure all portions of the filling process were witnessed.

The pharmacy was closed the next day so leaving the prescription for another pharmacist was not an option. The prescription had already been transferred from another pharmacy so I could not transfer the refill. At the time I believed I had done my due diligence to have the entire filling process witnessed and signed off, so there would not be any doubt of proper medication filling.

The circumstance was such that it was not legal in Washington to transfer ones' own prescription. The town in which I was living did not have many pharmacies open on Sunday. . .

In her testimony, respondent added that she thought she called the physician that morning regarding the refill. She further added that she tried to be as transparent as possible.

Respondent testified that she will not repeat the conduct that led to the disciplinary actions in Washington. She said she is safe to practice pharmacy because she never harmed any patient and has been a good pharmacist and patient advocate. Respondent emphasized her dedication and commitment to the safe dispensing of medications. As indicative of her dedication and commitment, she highlighted her recent work at St. Joseph Health and her overall work as a pharmacist. Respondent said that she would like to enroll in a Pharm D. program at Idaho State but needs an unrestricted license to do that. She would, however, accept a restricted license with terms and conditions.

Respondent's testimony was credible.

#### *Other Evidence Submitted by Respondent*

8. Respondent submitted letters from Matthew Saucedo, Pharm.D., Terry Lerma, Pharm. D., Terry Clark, Pharm. D., Nasser Basmeh, Marcus Young, Janean Kelly, Christina Orticke, Ember Skidmore, Pharm. D., and Deepa Ramasway, Pharm. D.

Dr. Saucedo is Pharmacy Program Manager at Petaluma Valley Hospital of St. Joseph Health. In an undated letter, Dr. Saucedo wrote that he supervised respondent the last two years at Petaluma Hospital where respondent worked as clinical manager in a consulting capacity. He described her as a valuable asset at the hospital who provided valuable clinical guidance to staff. Dr. Saucedo said he respected her work ethic, compassion and problem solving abilities. He believed that her honesty, clinical skills and professionalism will be a benefit to the practice of pharmacy in California. Dr. Saucedo said he was aware of respondent's disciplinary history and that she has proven herself to be a trustworthy and honest person and pharmacist. Dr. Saucedo said he would work with her without hesitation.

Dr. Lerma is Director of Pharmacy at St. Joseph Health. In a letter dated March 3, 2017, Dr. Lerma said she worked closely with respondent for four years at Kittias Valley Healthcare as her supervisor. At the time she served as Director of Pharmacy services and

Pharmacist in Charge. She described respondent as a gifted clinical pharmacist, patient advocate and she admired her remarkable work ethic. At St. Joseph Health, respondent brought knowledge and commitment to clinical pharmacy best practices and evidence based medicine and earned the respect of hospital administrators and staff. Dr. Lerma is aware of respondent's disciplinary history in Washington State. She believes that respondent is trustworthy and she has confidence she will abide by the laws governing pharmacists in California. Dr. Lerma said she would not hesitate to hire her as a pharmacist.

Dr. Clark is a licensed clinical pharmacist in Washington with 39 years of experience, with 25 years as a hospital pharmacy director. In a letter dated February 28, 2017, Dr. Clark stated that he was respondent's supervisor at Kittitas Valley Healthcare. Dr. Clark said that respondent demonstrated exceptional professionalism, respect, integrity, and compassion with "exceptional general and clinical knowledge." Dr. Clark is aware of respondent's disciplinary history but feels her discipline should not prevent her from being licensed to practice pharmacy. Dr. Clark also said he would hire her without hesitation.

Dr. Skidmore has been licensed as a pharmacist in California since 1982 and has also been licensed as a pharmacist in Michigan, New York, Ohio and Iowa. During her 38 year career, she has worked in many area of pharmacy including ambulatory clinics, hospitals, and in retail pharmacy. She has been a member of the faculty at Long Island University and Drake University in Iowa and has been an unpaid faculty member at the University of California San Francisco and Touro College. Dr. Skidmore works at Santa Rosa Memorial Hospital which is part of St. Joseph Health and held the position of Clinical Project Manager before respondent took that position. She has known respondent for the last 18 months while she worked as Pharmacy Clinical Consultant. Dr. Skidmore submitted a letter dated March 31, 2017, and also testified at the hearing. Her hearing testimony was consistent with what she wrote in her letter.

Dr. Skidmore described respondent as trustworthy, honest, professional, and able to work constructively with staff and other pharmacists. She believes she is an excellent pharmacist based on respondent's emphasis on evidence based pharmacy and the protocols she has written. As an example of the value of her work developing protocols, Dr. Skidmore has used a protocol in dosing a patient respondent created regarding an antibiotic. Dr. Skidmore said that she is aware of respondent's discipline in Washington but nonetheless enthusiastically felt that she should be licensed as a pharmacist in California. Dr. Skidmore commented that on one occasion she, herself, provided a hospital healthcare staff person with a blood control maintenance medication. Dr. Skidmore acknowledged that she obtained physician approval before she dispensed this medication while respondent did not obtain this approval.

Dr. Skidmore's testimony was credible.

Dr. Ramaswamy has been a licensed clinical pharmacist in California for the last seven years. She worked with respondent when respondent was Pharmacy Clinical Manager at Santa Rosa Memorial Hospital. Dr. Ramaswamy described respondent as hard working,



professional, dedicated, and practices by evidence based guidelines. She stated that the protocols respondent developed in formulary management, heparin management, and intensive care unit protections have helped ensure safe patient care. Dr. Ramaswamy is familiar with respondent's discipline in Washington and believes that respondent learned from her mistakes and believes she is safe to practice as a pharmacist. She would trust respondent to take care of her family.

While she noted this, Dr. Ramaswamy stated that she did not believe that respondent should have been disciplined because she has seen medications for headaches dispensed to staff and further, she said that she was not sure why there was an "accusation" regarding the 2009 self-dispensing discipline when the count was accurate. Dr. Ramaswamy said respondent's call to the physician was more of a "courtesy call" and the inventory was accurate. Considering that respondent admitted she self-dispensed a controlled medication to herself, it was not clear what Dr. Ramaswamy was trying to assert. Her assertions, however, showed that, while her testimony was credible, Dr. Ramaswamy was more of an advocate on respondent's behalf than a character witness. Her testimony regarding respondent's character is given little weight as a result.

The other persons who submitted letters on respondent's behalf described respondent as professional, trustworthy, a dedicated mother, an invaluable friend, and a person with a strong work ethic. Because Mr. Basmeh's letter of recommendation was written on May 29, 2014, before respondent's 2015 discipline, it has limited value and is given little weight.

Respondent also submitted a performance evaluation from Kittitas Valley Community Hospital from June 30, 2013. The evaluator described respondent as passionate about best practices and exceptional pharmacy service, a great patient advocate, and highly regarded by hospital staff.

#### *The Parties' Arguments Regarding Degree of Discipline*

9. Complainant asked that respondent's application should be denied. In the alternative, without prejudice to this position, complainant asked that if a probationary license is issued that, consistent with board guidelines, the license be issued subject to standard terms and conditions. These conditions should include education and ethics courses. In addition, complainant asked that respondent be subject to supervised practice.

Respondent argued that, consistent with the board's rehabilitation criteria respondent should be granted a license without restriction or should be publicly reprovved. Respondent asserted that the conduct at issue was not so serious that she should be placed on probation. At the same time respondent did not oppose a probationary license with terms and conditions but felt that she should not be required to have her practice of pharmacy supervised.

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## LEGAL CONCLUSIONS

### *The Purpose of License Discipline and the Board's Responsibility to Protect the Public*

1. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

### *Standard of Proof*

2. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that a fact finder is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

### *Applicable Laws*

3. The board may deny a license on the ground that the applicant has committed any act if done by a licensee would be a basis for suspension or revocation of the license, or if the act is substantially related to the qualifications functions or duties of the licensee. (Bus. & Prof. Code § 480, subs. (a)(1), (a)(3)(A), (a)(1)(B).) The board may refuse a license to any applicant guilty of unprofessional conduct. (Bus. & Prof. Code § 4300.) Unprofessional conduct includes disciplinary action against a licensee who is guilty of unprofessional conduct, which, by definition, includes any disciplinary action taken against a licensee by another state. (Bus. & Prof. Code, § 4301, subd. (n).)

Unprofessional conduct also includes 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. (Bus. & Prof. Code, § 4301, subd. (j).) In denying a license the board may in its discretion issue a probationary license to any applicant who is guilty of unprofessional conduct subject to terms and conditions not contrary to public policy. (Bus. & Prof. Code, § 4300, subd. (c).)

4. Under Business and Professions Code section 4059, subdivision (a): “[a] person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.”

5. Health and Safety Code section 11170 provides that: “No person shall prescribe, administer, or furnish a controlled substance for himself.”

6. Health and Safety Code section 11164, subdivision (b), provides as follows:

(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

*Regulation Regarding Rehabilitation Criteria and Disciplinary Guidelines*

7. In California Code of Regulations, title 16, section 1769, subdivision (b), the board has set forth the following criteria for rehabilitation when considering the denial of a license:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

8. The board's Disciplinary Guidelines (Rev. 10/2007) also contains criteria to consider in determining the appropriate level of discipline, including: the nature and severity of the acts under consideration, the actual or potential harm to the public, the actual or potential harm to any patient, the number or variety of current violations, respondent's prior disciplinary record, evidence of mitigation and rehabilitation, and the amount of time that has passed since the occurrence of the acts under consideration.

In cases involving the self-dispensing of controlled substances, the board classifies this conduct as requiring a Class II level of discipline. Class II violations involve violations that have a potential for serious harm and reflect on ethics, care exercised or competence. The board recommends under this class of discipline a probationary term of at least three years, or five years where self-administration or diversion of controlled substances occurred at the licensed premises. The board classifies dispensing dangerous drugs without a prescription as requiring a Class III level of discipline. This level of discipline conduct involves knowing or willfully violating laws or regulations pertaining to dispensing or distributing dangerous drugs or controlled substances. The board also recommends under this class of discipline a probationary term of at least three years, or five years where self-administration or diversion of controlled substances occurred at the licensed premises with appropriate terms and conditions.

#### *Cause Exists to Deny Respondent's Application for a License*

9. Cause exists under Business and Professions Code sections 480, subdivision (a)(1), and 4301, subdivisions (j) and (n), to deny respondent's application for a pharmacist license. In 2011 and 2016 the Washington State Board of Pharmacy took disciplinary actions against respondent's pharmacist license and these actions constitute unprofessional conduct that would be a basis to discipline her license in California. The conduct at issue in those proceedings involved violations of laws governing the regulation of controlled substances and dangerous drugs and would constitute unprofessional conduct in California and be a basis to discipline her license in this state. In 2009, respondent dispensed a controlled substance to herself, in violation of Health and Safety Code section 11170, and in 2014 respondent dispensed dangerous drugs without prescriptions to staff at the hospital where she worked, in violation of Business and Professions Code section 4059.

#### *Evaluation Regarding the Degree of Discipline*

10. Considering the board's criteria to assess the appropriate level of discipline in this matter, it is determined that it would not be against the public interest to issue respondent a probationary license with terms and conditions designed to ensure public protection.

This decision is reached based on the totality of the evidence of record. Respondent's conduct was serious and represented fundamental violations of her duties as a pharmacist.

By dispensing a controlled substance to herself in 2009 and then dispensing dangerous drugs to hospital staff in 2014 she violated clear laws governing the safe practice of pharmacy. Despite committing these violations, respondent at the hearing appeared to not appreciate the legitimate concerns raised by her conduct and sought to minimize it. She explained that she acted in a transparent manner when she self-dispensed Norco to herself in 2009 and she dispensed dangerous drugs to hospital staff because the hospital had staffing issues and her dispensing of these medications constituted maintenance medications, although the evidence did not support her claim. In fact, despite no evidence that she dispensed medications to hospital staff as maintenance medications, respondent appeared to insist that her conduct dispensing the medications to hospital staff without prescriptions was appropriate, a concerning sentiment which was echoed by two of her character witnesses, Drs. Skidmore and Ramaswamy.

However, despite the concern that she lacks appreciation of the seriousness of the conduct at issue, respondent credibly testified that she will not engage in such conduct again, and she presented as dedicated to the safe practice of pharmacy. Moreover, as mitigating factors, respondent acted transparently in 2009 when she self-dispensed the controlled substance to herself, and she dispensed medications for headache medications to hospital staff under the good faith, if mistaken, belief she was providing these staff persons with maintenance medications. Respondent, further, has practiced as a pharmacist since 1996 without any other incidents.

Considering all these factors and consistent with the board's guidelines, a three-year period of probation with standard terms and conditions, including the requirement that respondent take ethics and other education courses, would be consistent with public protection. In addition, it is not necessary to ensure public protection to place respondent on probation for five years, as the guidelines recommend in instances of self-dispensing of controlled substances. Regarding complainant's request that respondent's pharmacy practice be supervised, this request is denied because this term is not necessary to protect the public for the reasons stated.

## ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

### **1. OBEY ALL LAWS**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

## **2. REPORT TO THE BOARD**

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

## **3. INTERVIEW WITH THE BOARD**

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

## **4. COOPERATE WITH BOARD STAFF**

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

## **5. CONTINUING EDUCATION**

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

## **6. REMEDIAL EDUCATION**

Within ninety (90) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to ethics and the dispensing of controlled substances. The program of remedial education shall consist of at least 16 hours, which shall be completed within 12 months/year at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

Failure to timely submit or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board or its designee.

Following the completion of each course, the board or its designee may require the respondent, at his or her own expense, to take an approved examination to test the respondent's knowledge of the course. If the respondent does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the board in the same subject area.

## **7. NOTICE TO EMPLOYERS**

During the period of probation, respondent shall notify all present and prospective employers in California of the decision in case number 5949 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment in California, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5949, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5949 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 in California by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the

pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5949 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective California 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.

#### **8. NO SUPERVISION OF INTERNS, SERVING AS PHARMACIST-IN-CHARGE (PIC), SERVING AS DESIGNATED REPRESENTATIVE-IN-CHARGE, OR SERVING AS A CONSULTANT**

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

#### **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.

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## **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 his or her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or 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 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within 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 in California for at least 80 hours, as defined by Business and Professions Code section 4000 *et seq.* “Resumption of practice” means any calendar month during which respondent is practicing as a pharmacist in California for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 *et seq.*

Respondent is required to practice as a pharmacist in a licensed pharmacy setting that dispenses medication for a minimum of one year prior to the completion of probation. After the first year of probation, the board or its designee may consider a modification of this requirement. If respondent fails to comply with this requirement or a subsequent modification thereto, such failure shall be considered a violation of probation.

#### **14. VIOLATION OF PROBATION**

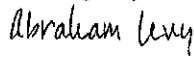
If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the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

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

#### **15. COMPLETION OF PROBATION**

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license shall be issued a license without restriction.

DATED: June 13, 2017

DocuSigned by:  
  
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ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

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*Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues  
13 Against:  
14 **TERI LYNN GILBERT**  
15 **Pharmacist License Applicant**  
16 Respondent.

Case No. 5984

**STATEMENT OF ISSUES**

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 29, 2016, the Board received an application for a Pharmacist  
24 License from Teri Lynn Gilbert (Respondent). On or about March 20, 2016, Teri Lynn Gilbert  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on July 26, 2016.

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## JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states: "The board may refuse a license to any applicant guilty of unprofessional conduct. . . ."

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

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

...

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . .

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1 7. Section 4301 of the Code states:

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

6 (n) The revocation, suspension, or other discipline by another state of a license to  
7 practice pharmacy, operate a pharmacy, or do any other act for which a license is  
8 required by this chapter. . . .

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(2011 Out-of-State Discipline Against Washington Pharmacist Credential)**

10 8. Respondent's application is subject to denial under sections 480, subdivision (a)(1)  
11 of the Code in that her Washington pharmacist credential was subjected to discipline by the  
12 Washington Pharmacy Quality Assurance Committee, an act that would be grounds for discipline  
13 under Code section 4301, subdivision (n) for pharmacist licensed in California. The  
14 circumstances are as follows:

15 9. Respondent was issued a credential to practice as a pharmacist in the State of  
16 Washington by the Pharmacy Quality Assurance Commission (Commission) on January 28,  
17 1999.

18 10. On July 29, 2011, in case number M2011-23, the Commission filed a Statement of  
19 Allegations and Summary of Evidence alleging that on or about May 16, 2009, while working as  
20 the sole pharmacist at a Yakima, Washington pharmacy, she self-filled her own prescription for a  
21 Schedule III controlled substance.

22 11. On August 2, 2011, Respondent entered into a Stipulation to Informal Disposition.  
23 Respondent acknowledged that a finding of unprofessional conduct or inability to practice based  
24 on the Commission's allegations, if proven, would constitute grounds for discipline under the  
25 Revised Code of Washington (RCW) 18.130.180(7), via a violation of RCW 69.50.308(3)(i).

26 12. Effective August 12, 2011, Respondent's credential was placed on probation for a  
27 term of two years. Respondent was required to reimburse the Commission costs in the amount of  
28 \$1,000.00 within six months of the effective date of the stipulation. Respondent was prohibited

1 from serving as a preceptor, or supervising pharmacy interns for the duration of the probation  
2 period. Respondent was further required to complete five hours of continuing education in the  
3 area of Law.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(2016 Out-of-State Discipline Against Washington Pharmacist Credential)**

6 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)  
7 of the Code in that her Washington pharmacist credential was subjected to discipline by the  
8 Washington Pharmacy Quality Assurance Committee, an act that would be grounds for discipline  
9 under Code section 4301, subdivision (n) for pharmacist licensed in California. The  
10 circumstances are as follows:

11 14. On March 17, 2015, in case number M2015-284, the Commission filed a  
12 Statement of Allegations and Summary of Evidence alleging that in or about March 2014, during  
13 a staff meeting at the Ellensburg, Washington, hospital where she was employed as a pharmacist,  
14 Respondent stated that she had given the legend drug Fioricet (acetaminophen, butalbital and  
15 caffeine) to staff nurses when they had headaches. When interviewed by a (Washington)  
16 Department of Health investigator on October 21, 2014, Respondent acknowledged that while  
17 working at the hospital, she diverted and/or delivered to other staff, without prescriptions, the  
18 legend drugs Fioricet, Imitrex (sumatriptan) and Naproxen.

19 15. On November 13, 2015, Respondent entered into a Stipulation to Informal  
20 Disposition. Respondent acknowledged that a finding of unprofessional conduct or inability to  
21 practice based on the Commission's allegations, if proven, would constitute grounds for  
22 discipline under the Revised Code of Washington (RCW) 18.130.180(1), (6), (7), and (23)(c); and  
23 RCW 18.64.160(3).

24 16. The Washington Administrative Code 246-16-800(2)(b)(iii) states:

25 Surrender of a credential may be imposed when the license holder is at the end of  
26 his or her effective practice and surrender alone is enough to protect the public. The  
license holder must agree to retire and not resume practice.

27 17. The Commission determined that the permanent surrender of Respondent's  
28 pharmacist credential was an appropriate sanction in this case. Effective January 14, 2016,


1 Respondent's credential to practice pharmacy in Washington was surrendered, and she agreed not  
2 to resume practice in the State of Washington. Respondent's pharmacy credential is not eligible  
3 for reinstatement in the future.

4 **PRAYER**

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

- 7 1. Denying the application of Teri Lynn Gilbert for a Pharmacist License;  
8 2. Taking such other and further action as deemed necessary and proper.

9  
10 DATED: 11/2/16



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

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