

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

In the Matter of the Accusation Against:

FIDEL HECTOR VALENZUELA, Respondent

Pharmacist License No. RPH 39708

Agency Case No. 6728

OAH No. 2020010124

DECISION AFTER REJECTION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 27, 2020.¹

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20 and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in-place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

Stephen Aronis, Deputy Attorney General, appeared on behalf of complainant, Ann Sodergren, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Attorneys David Wiechert and Jahn timer Goldstein appeared on behalf of respondent.

Oral and documentary evidence was received, the record closed, and the matter submitted on May 27, 2020. On May 28, 2020, respondent filed an order from the federal district court granting respondent's request for early termination of probation. The document was marked as Exhibit FF. The record was reopened to give complainant an opportunity to object and/or make an argument regarding Exhibit FF. Complainant did not object to the exhibit but argued that it should be given little weight in reaching a conclusion. Exhibit FF was admitted to the record. The record closed and the matter was resubmitted for decision on June 5, 2020.

On July 3, 2020, the ALJ issued a proposed decision in this matter which recommended stayed revocation of Respondent's pharmacy license and three years of probation with standard conditions, including the inability of the respondent to act as a consultant. On August 12, 2020, the Board issued an order to reject the proposed decision and notified the parties that they would have an opportunity to submit written arguments and the Board was particularly interested in arguments on whether the discipline was appropriate under the circumstances. On October 29, 2020, the Board issued an argument setting November 25, 2020 as the date for submission of written arguments. Having now considered the matter, including the transcript and briefs filed by both parties, the Board issues its decision after rejection of the proposed decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 9, 1985, the board issued Pharmacist License Number RPH 39708 to respondent, which was in full force and effect at all times relevant to these proceedings. The license will expire on February 28, 2021, unless renewed.

2. On August 26, 2019, complainant, in her official capacity, filed the accusation against respondent, alleging the following causes for discipline: 1) commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption; and 2) conviction of a crime that is substantially related to the qualifications, functions, and duties of a pharmacist.

3. Complainant seeks suspension or revocation of respondent's license and recovery of enforcement costs.

Respondent's Conviction

4. On March 13, 2018, in the United States District Court for the Eastern District of Texas, in Case Number 6:18CR-09, respondent plead guilty to and was convicted of, a felony violation of Title 18 United States Code section 1952, interstate and foreign travel or transportation in aid of racketeering enterprises. The factual basis for the plea, taken from court documents, was as follows:

using a facility in interstate commerce, namely a wire transfer, with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of, an unlawful activity, namely, bribery, which is in violation of California Penal Code section 641.3 [commercial bribery].

California Penal Code section 641.3, provides:

(a) Any employee who solicits, accepts, or agrees to accept money or anything of value from a person other than his or her employer, other than in trust for the employer, corruptly and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or anything of value under those circumstances, is guilty of commercial bribery . . .

The court placed respondent on four years of formal probation, commencing August 9, 2018. The court, among other things, ordered respondent to forfeit \$304,374.15, which he paid in full prior to sentencing. Respondent's consulting company also paid to the government \$1,659,359.04 as part of a non-prosecution agreement.

On May 22, 2020, respondent filed a motion for early termination of probation pursuant to Title 18 United States Code section 3564(c), which provides that the court, after considering various factors, may grant early termination of probation at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.²

² Title 18 United States Code section 3553(a) sets forth the following factors, in part, to be considered: nature and circumstances of the offense; history and characteristics of the defendant; seriousness of the offense; need to promote respect for the law, and provide just punishment for the offense; need to deter criminal conduct; protection of the public; educational or vocational training, medical care, or other correctional treatment; and the need for restitution.

On May 28, 2020, the court granted respondent's motion and terminated his probation.

Conduct Leading to Respondent's Conviction³

5. Pharmaceutical Technologies Inc. (PTI), is a pharmacy benefits manager. PTI uses a network of pharmacies to service employee health care benefit plans across the country. Respondent's consulting company, Strategic Pharmacy Services (SPS), is known in the pharmaceutical world as a "producer," which has close relationships with health benefit plans and networks who require producer assistance to facilitate their health benefit programs. A federal investigation uncovered a scheme whereby PTI and certain producers would enter into agreements to provide illegal kickbacks. The producers involved unlawfully used their positions to steer health benefit plans to PTI in exchange for kickbacks from PTI. Respondent's company, SPS, was one of these producers.

Specifically, with respect to respondent, SPS persuaded the Chief Medical Officer (Dr. H) of Desert Medical Group, a subsidiary of Heritage Provider Network, to utilize PTI's services. On or about April 1, 2013, respondent through SPS received \$304,364.15 from PTI as a kickback for making that arrangement. Respondent then paid an unknown portion of that amount to Dr. H. on or about May 31, 2013, in furtherance of the illegal kickback scheme.

³ The following summary of the conduct underlying respondent's conviction was derived from respondent's testimony, court documents (factual basis for respondent's plea), and an official press release put out by the United States Department of Justice, Eastern District of Texas.

Respondent's Testimony

6. Respondent's testimony is summarized as follows: he received his Doctor of Pharmacy degree in 1985 and has been licensed since that time. Respondent worked from 1985 to 1996 as an intern, then staff pharmacist, and ultimately a pharmacist-in-charge. From 1994 to 1998 respondent was the Director of Pharmaceutical services for an integrated medical group network. His duties in that position were to oversee a hospital pharmacy, and pharmacies within medical clinics and anti-coagulation clinics run by pharmacists. In 2002, respondent worked for Heritage Provider Network as a pharmacist on occasion. From 1998 to 2002, respondent started getting hired as a consultant; he started SPS for the purpose of helping his clients save money on their prescription drug programs. Respondent entered into a formal agreement on behalf of SPS between SPS and PTI in 2002. Through SPS, respondent recommended six medicare health plans to enter into contracts with PTI. From 2002 to 2016, respondent received over \$20 million from PTI for SPS services in recommending PTI to those health care plans that hired PTI. (Administrative Record at p. 506). Respondent also stated that payments received from PTI were not received in lump sums but were paid out monthly and increased over time if enrollees in the plan increased. (Administrative Record at pp. 506-507).

Regarding the conviction, respondent said he formed a relationship with Dr. H., the Chief Medical Officer of Desert Medical Group, a subsidiary of Heritage Provider Network. He convinced Dr. H to enter into an agreement with PTI regarding the provision of prescription drug services. This made respondent a lot of money and also saved Heritage Provider Network a lot of money. Because respondent was grateful that Dr. H entered into the agreement on behalf of Heritage Provider Network, respondent "thanked" him by giving him some money. Respondent did not pay Dr. H in one lump sum but paid him over time as respondent received money from PTI. (Administrative Record at pp. 513-514). Heritage Provider Network did not sustain any loss as a result of the agreement.

Respondent referred to his statement made in federal court, wherein he took full responsibility for his actions. As part of his plea agreement, respondent signed a written factual basis for his plea agreement that stated that he received the payment with the intent to carry on an unlawful act, namely bribery and knowingly made the payment with the intent to carry on an unlawful act. (Administrative Record at pp. 134-135). Respondent would like to keep his pharmacist license because, even though he doesn't act as a pharmacist, in his consulting business the pharmacist license brings credibility to the table. Respondent would like to continue acting as a consultant.

Respondent's Written Statement to Sentencing Judge

7. Following his conviction, respondent wrote a letter to the federal judge that would be responsible for sentencing him. Respondent wrote:

I come before you with a heavy heart, ashamed of my choices and very sorry for my behavior. I am solely to blame for my transgressions that have placed tremendous burden on my wife, my three children and my family. I struggle constantly with the emotional pain and have no words to describe the depth of my feelings and remorse . . .

[¶] . . . [¶]

It is very interesting that after an event or a transgression our vision becomes 20:20. Unfortunately this is true . . . [regarding] my transgression of Commercial Bribery. I should have been more prudent but I was caught up with generating more revenue for PTI and myself . . . I understand this action was wrong and I wish this could be undone but this is not possible.

Through this tremendously painful ordeal, I have physical and emotional pain beyond description that touched the core of my soul. Although I have tried to shield this pain from my wife and family, I can see and hear the mumbling of their concerns. As the person responsible at my company I assume the guilt, but I feel most guilty to have exposed my family to this burden and liability. I will be sixty (60) years old [in February 2019]. By all accounts and upcoming consequences my career may be over.

It is my hope that your sentence will allow me to continue saving money for our Medicare Part D program, contribute to my church and our community, and exercise the knowledge and talent given to me . . .

Character Letters

8. Respondent submitted character letters from the following individuals: Melinda Valenzuela, Pharm. D., a friend of 30 years; respondent's three adult children; respondent's sister; the pastor of respondent's church Gary Tabor; James Cotter, a friend of 17 years; Linda Gerhardt, a professional acquaintance; William Brooksby, a client; Shelly Shoening, Pharm. D.; Alvin Hom, a friend for over 30 years and business associate; Kishan Thapar, M.D., a business associate and friend of 20 years; Panch Jayakumar, M.D., a business associate and friend of 24 years; Timothy Stocks, a friend of 20 years; Shawn C. Michael, a business associate of 20 years; Igot Kokhan, a friend of 10 years; Tracy Browne, a colleague; and Dennis Hom, Pharm. D. Each letter was addressed to the federal judge responsible for sentencing respondent for his conviction; all were dated in 2018; and none of them addressed respondent's misconduct or rehabilitation for license discipline purposes. Nonetheless, all spoke very highly of respondent personally and professionally; and all were designed to plea

for leniency to the federal judge in respondent's sentencing.

9. One of the letters, dated May 4, 2020, was written by a nurse at Inter Valley Health Plan. Ms. Tenorio discussed how respondent has been able to save them a lot of money in connection with managing their Medicare Part D pharmacy benefit. Ms. Tenorio also discussed how respondent's licensure as a pharmacist enhances his credentials among physicians, pharmacists, and other peers in connection with consulting services.

Costs

10. Complainant requested cost recovery under Business and Professions Code section 125.3. A certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$7,257.50. The certification complied with California Code of Regulations, title 1, section 1042, subdivision (b), and the requested costs were reasonable. Complainant also included expected costs to be incurred in preparation for hearing and to litigate the hearing in the amount of \$2,040 for 12 hours of work at \$170 per hour. These costs are estimates, do not comply with California Code of Regulations, title 1, section 1042, subdivision (b), and are disallowed.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant has the burden of proving by clear and convincing evidence that the allegations in the Accusation are true. (Evid. Code, §§ 115; 500.)

2. The board is authorized to impose discipline against a pharmacist license if a licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensed pharmacist. (Bus. & Prof. Code, § 490.)

3. A crime or act is substantially related to the qualifications, functions, or duties of a pharmacist if, to a substantial degree, it evidences present or potential unfitness to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare. (Bus. & Prof. Code, § 4301, subd. (l).)

4. The record of conviction of a crime shall be conclusive evidence of the fact that the conviction occurred. (Bus. & Prof. Code, §§ 493.)

5. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

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

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter . . .

6. It is not necessary for the misconduct to have occurred in the actual practice of the profession. (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

Evaluation

7. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

8. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step; a truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.) In a more recent case, the California Supreme Court has stated that little weight should be given to the fact that a [bar applicant] did not commit additional crimes while in prison or while on probation or parole. *In re Gossage* (2000), 23 Cal.4th 1080, 1099. For this reason, the court emphasized that the “relevant timeframe” for assessing rehabilitation is after an applicant has completed probation or parole. *Id.*

9. The board has set forth Disciplinary Guidelines (Rev. 2/2017) to assist in determining the appropriate level of discipline. Those factors include: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record, including level of compliance with disciplinary order(s); prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s); number and/or variety of current violations; nature and severity of the act(s), offense(s) or crime(s) under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the act(s) or offense(s); whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for

conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; financial benefit to the respondent from the misconduct; and other licenses held by the respondent and license history of those licenses.

Evaluation

CAUSE EXISTS TO IMPOSE DISCIPLINE

10. Cause exists to sustain the first cause for discipline pursuant to Business and Professions Code section 4301, subdivision (f). Respondent was convicted of interstate transportation in aid of a racketeering enterprise (commercial bribery). Both the conviction itself, and the conduct underlying the conviction as detailed in the Factual Findings, constituted an act of moral turpitude, deceit, and corruption.

11. Cause exists to sustain the second cause for discipline pursuant to Business and Professions Code section 490 and 4301, subdivision (l). Respondent was convicted of interstate transportation in aid of a racketeering enterprise (commercial bribery) on March 13, 2018, and sentenced August 9, 2019.

REVOCATION IS APPROPRIATE

12. In consideration of the Disciplinary Guidelines and the seriousness of the offense, revocation of respondent's pharmacist license is appropriate. Respondent's conviction was a serious offense involving a corrupt act of bribery related to a medicare health plan and involved a course of conduct for respondent's financial benefit. The conviction falls into Category II of the board's disciplinary guidelines. Category II has a maximum discipline of revocation of the license and a minimum discipline of stayed revocation of the license and probation for three or five years. The penalties enumerated for Category II offenses are for a single violation. For multiple violations the penalty shall increase accordingly. The offense charged related to a total payment of over \$300,000 to Dr. H but respondent testified that this payment was not made in a

lump sum but was paid over time between 2009 and 2013 which demonstrates that the underlying conduct was not a one-time event but occurred over the course of a period of years. (Administrative Record at pp. 513 -514). The record also shows that respondent's company, SPS, earned approximately \$20 million from PTI over the years and respondent's company forfeited to the federal government approximately \$1.7 million as fruit of the poisonous tree in a non-prosecution agreement to avoid prosecution for similar offenses. (Administrative Record at pp. 506, 521-522). The Board acknowledges that respondent has been a licensed pharmacist since 1985 with an unblemished record, however respondent has not been a practicing pharmacist since 2016, and between 2002 and 2016, respondent's primary work was as a consultant. (Administrative Record p. 500). There is no evidence that respondent's conduct physically harmed any patient. However, bribery and kickback schemes can potentially harm the public by undermining public trust and can harm consumers in the aggregate.

13. Although it has been seven years since respondent's charged criminal conduct ending in 2013, respondent was not convicted until 2018 and probation was terminated in July 2020. There has not been sufficient time for the respondent to show rehabilitation since being removed from the threat of federal prosecution and being removed from probation for the federal crime. Respondent took full responsibility for his wrongdoing in the federal case and signed a factual basis admitting that he engage in the receipt and payment of monies with the intent to carry out the unlawful act of bribery. Respondent, in his initial testimony, stated that he paid Dr. H out of gratitude and not with the intent of bribing him. (Administrative Record at pp. 516, 518-519). When pressed during cross examination, Respondent admitted that the act of paying Dr. H, under the law, was commercial bribery, although that was not respondent's intent. (Administrative Record at p. 519). Respondent's testimony can be viewed as contradicting his statements in the signed factual basis that was part of his plea agreement and casts doubt on whether respondent truly understands or accepts the nature of his corrupt act.

14. Finally, respondent argued that, if placed on probation, he wanted to still act as a consultant that is prohibited if he was placed on probation as a standard condition of probation. Respondent would presumably act as a consultant if his pharmacy license was restored without conditions. Respondent has not practiced as a pharmacist since 2016. Rather, respondent has acted as a consultant and a pharmacy license is not necessary to act as a consultant. Respondent candidly admitted that having a pharmaceutical license is important to him as it gives him credibility when interacting with pharmacists, physicians and specialists. Given respondent's conviction for an offense involving moral turpitude, deceit and corruption and because the board does not have the ability to directly oversee consultants' work or businesses, revocation of the license is the only way to ensure that respondent does not use his pharmacy license to gain credibility in negotiations with health care plans to commit any further wrongdoing.

15. The board also acknowledges that the respondent paid full restitution, including payment of the amount paid to Dr. H and Respondent's business, SPS, paid the federal government approximately \$1.7 million in a non-prosecution agreement as fruit of the poisonous tree. (Administrative Record pp. 521-522). Respondent also submitted a number of character letters that were introduced in the federal criminal case. Although the letters were not directed specifically at this proceeding, it was clear that respondent is very respected in the pharmaceutical community and as a friend and father. However, given the seriousness of the offense and for the other reasons stated above, the Board does believe that either the payment of restitution or these character letters warrant a lesser penalty than revocation of respondent's license.

Costs

16. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation

and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondent displayed a good faith belief in the merits of his position; he did not raise a colorable challenge to the proposed discipline, except that he was successful at obtaining probation as opposed to revocation; respondent has the financial ability to make payments; and the scope of the investigation was appropriate in light of the misconduct.

Respondent argued that the attorney general rates and ultimate calculations were wrong because some showed the attorneys billed out at \$170 and others billed out at \$220. According to complainant, there was a rate change during the time the case was pending, which explains the two different rates. Thus, this argument was rejected. Respondent also argued that quarter-hour billing as opposed to billing in increments of 10 minutes is “not standard in the industry.” This is, however, standard in state agency legal billing. Finally, respondent argued that 9.2 hours spent in

settlement negotiations as reported on the certification of costs is too high. Complainant argued that the 9.2 hours not only includes telephone calls and discussions, but also includes reviewing pleadings, discussing it with the client, and preparing written correspondence to the client. Therefore, 9.2. hours is not unreasonable for settlement negotiations under these circumstances.

The costs are therefore found to be \$7,257.50.

ORDER

Pharmacist License Number RPH 39708, issued to Fidel Hector Valenzuela, is revoked.

This Decision shall become effective at 5:00 p.m. on February 6, 2021.

It is so ORDERED on January 7, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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

In the Matter of the Accusation Against:

FIDEL HECTOR VALENZUELA, Respondent

Pharmacist License No. RPH 39708

Respondent

Agency Case No. 6728

OAH No. 2020010124

ORDER REJECTING PROPOSED DECISION

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated August 12, 2020. In addition to any arguments the parties may wish to submit, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances.

Written argument shall be filed with the Board of Pharmacy, Attn. Susan Cappello, 2720 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833, or susan.cappello@dca.ca.gov on or before **November 25, 2020**.

IT IS SO ORDERED this 29th day of October 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe
Board President

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ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

Although the right to argue is not limited, the board is particularly interested in arguments directed to the question whether the discipline is appropriate under the circumstances. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

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It is so ORDERED on August 12, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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By

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PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 27, 2020.¹

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20 and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in-place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

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Respondent's Testimony

6. Respondent's testimony is summarized as follows: he received his Doctor of Pharmacy degree in 1985 and has been licensed since that time. Respondent worked from 1985 to 1996 as an intern, then staff pharmacist, and ultimately a pharmacist-in-charge. From 1994 to 1998 respondent was the Director of Pharmaceutical services for an integrated medical group network. His duties in that position were to oversee a hospital pharmacy, and pharmacies within medical clinics and anti-coagulation clinics run by pharmacists. In 2002, respondent worked for Heritage Provider Network as a pharmacist on occasion. From 1998 to 2002, respondent started getting hired as a consultant; he started SPS for the purpose of helping his clients save money on their prescription drug programs. Respondent entered into a formal agreement on behalf of SPS between SPS and PTI in 2002. From 2002 to 2016, respondent received over \$20 million from PTI for SPS services.

Regarding the conviction, respondent said he formed a relationship with Dr. H., the Chief Medical Officer of Desert Medical Group, a subsidiary of Heritage Provider Network. He convinced Dr. H to enter into an agreement with PTI regarding the provision of prescription drug services. This made respondent a lot of money and also saved Heritage Provider Network a lot of money. Because respondent was grateful that Dr. H entered into the agreement on behalf of Heritage Provider Network, respondent "thanked" him by giving him some money. Heritage Provider Network did not sustain any loss as a result of the agreement.

Respondent referred to his statement made in federal court, wherein he took full responsibility for his actions. Respondent would like to keep his pharmacist license because, even though he doesn't act as a pharmacist, in his consulting business the

pharmacist license brings credibility to the table. Respondent would like to continue acting as a consultant.

Respondent's Written Statement to Sentencing Judge

7. Following his conviction, respondent wrote a letter to the federal judge that would be responsible for sentencing him. Respondent wrote:

I come before you with a heavy heart, ashamed of my choices and very sorry for my behavior. I am solely to blame for my transgressions that have placed tremendous burden on my wife, my three children and my family. I struggle constantly with the emotional pain and have no words to describe the depth of my feelings and remorse . . .

[¶] . . . [¶]

It is very interesting that after an event or a transgression our vision becomes 20:20. Unfortunately this is true . . . [regarding] my transgression of Commercial Bribery. I should have been more prudent but I was caught up with generating more revenue for PTI and myself . . . I understand this action was wrong and I wish this could be undone but this is not possible.

Through this tremendously painful ordeal, I have physical and emotional pain beyond description that touched the core of my soul. Although I have tried to shield this pain from my wife and family, I can see and hear the mumbling

of their concerns. As the person responsible at my company I assume the guilt, but I feel most guilty to have exposed my family to this burden and liability. I will be sixty (60) years old [in February 2019]. By all accounts and upcoming consequences my career may be over.

It is my hope that your sentence will allow me to continue saving money for our Medicare Part D program, contribute to my church and our community, and exercise the knowledge and talent given to me . . .

Character Letters

8. Respondent submitted character letters from the following individuals: Melinda Valenzuela, Pharm. D., a friend of 30 years; respondent's three adult children; respondent's sister; the pastor of respondent's church Gary Tabor; James Cotter, a friend of 17 years; Linda Gerhardt, a professional acquaintance; William Brooksby, a client; Shelly Shoening, Pharm. D.; Alvin Hom, a friend for over 30 years and business associate; Kishan Thapar, M.D., a business associate and friend of 20 years; Panch Jayakumar, M.D., a business associate and friend of 24 years; Timothy Stocks, a friend of 20 years; Shawn C. Michael, a business associate of 20 years; Igot Kokhan, a friend of 10 years; Tracy Browne, a colleague; and Dennis Hom, Pharm. D. Each letter was addressed to the federal judge responsible for sentencing respondent for his conviction; all were dated in 2018; and none of them addressed respondent's misconduct or rehabilitation for license discipline purposes. Nonetheless, all spoke very highly of respondent personally and professionally; and all were designed to plea for leniency to the federal judge in respondent's sentencing.

9. One of the letters, dated May 4, 2020, was written by a nurse at Inter Valley Health Plan. Ms. Tenorio discussed how respondent has been able to save them a lot of money in connection with managing their Medicare Part D pharmacy benefit. Ms. Tenorio also discussed how respondent's licensure as a pharmacist enhances his credentials among physicians, pharmacists, and other peers in connection with consulting services.

Costs

10. Complainant requested cost recovery under Business and Professions Code section 125.3. A certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$7,257.50. The certification complied with California Code of Regulations, title 1, section 1042, subdivision (b), and the requested costs were reasonable. Complainant also included expected costs to be incurred in preparation for hearing and to litigate the hearing in the amount of \$2,040 for 12 hours of work at \$170 per hour. These costs are estimates, do not comply with California Code of Regulations, title 1, section 1042, subdivision (b), and are disallowed.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant has the burden of proving by clear and convincing evidence that the allegations in the Accusation are true. (Evid. Code, §§ 115; 500.)

2. The board is authorized to impose discipline against a pharmacist license if a licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensed pharmacist. (Bus. & Prof. Code, § 490.)

3. A crime or act is substantially related to the qualifications, functions, or duties of a pharmacist if, to a substantial degree, it evidences present or potential unfitness to perform the functions of a pharmacist in a manner consistent with the public health, safety, or welfare. (Bus. & Prof. Code, § 4301, subd. (l).)

4. The record of conviction of a crime shall be conclusive evidence of the fact that the conviction occurred. (Bus. & Prof. Code, §§ 493.)

5. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

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

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter . . .

6. It is not necessary for the misconduct to have occurred in the actual practice of the profession. (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

Evaluation

7. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

8. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step; a truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

9. The board has set forth Disciplinary Guidelines (Rev. 2/2017) to assist in determining the appropriate level of discipline. Those factors include: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record, including level of compliance with disciplinary order(s); prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s); number and/or variety of current violations; nature and severity of the act(s), offense(s) or crime(s) under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the act(s) or offense(s); whether the conduct was intentional or negligent,

demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; financial benefit to the respondent from the misconduct; and other licenses held by the respondent and license history of those licenses.

Evaluation

CAUSE EXISTS TO IMPOSE DISCIPLINE

10. Cause exists to sustain the first cause for discipline pursuant to Business and Professions Code section 4301, subdivision (f). Respondent was convicted of interstate transportation in aid of a racketeering enterprise (commercial bribery). Both the conviction itself, and the conduct underlying the conviction as detailed in the Factual Findings, constituted an act of moral turpitude, deceit, and corruption.

11. Cause exists to sustain the second cause for discipline pursuant to Business and Professions Code section 490 and 4301, subdivision (l). Respondent was convicted of interstate transportation in aid of a racketeering enterprise (commercial bribery) on March 13, 2018, and sentenced August 9, 2019.

PROBATION WITH STANDARD TERMS AND CONDITIONS IS APPROPRIATE

12. In consideration of the Disciplinary Guidelines and case law pertaining to rehabilitation, revocation of respondent's pharmacist license is not required. Respondent's conviction was serious and involved a corrupt act. But, that fact must be balanced with the fact that respondent has been a practicing pharmacist since 1985 with an unblemished record. Respondent admitted fault and pleaded guilty to the crime of commercial bribery. There is no evidence that respondent's conduct harmed any patient. The federal court terminated respondent's probation early, effective May

28, 2020. Respondent paid full restitution. It has been seven years since respondent's actual misconduct, which occurred in 2013. Respondent has not been arrested or convicted of any other crime since the conviction that gave rise to this matter, and respondent took full responsibility for his wrongdoing. Finally, respondent submitted a number of character letters. Although the letters were not directed specifically at this proceeding, it was clear that respondent is not only very respected in the pharmaceutical community, but also as a friend and father. On this record, probation is therefore appropriate.

Respondent argued that, if placed on probation, he should still be able to act as a consultant. Failing to recognize that pharmacists serve in many capacities other than simply dispensing drugs, respondent argued, ignores the reality of how pharmacists function in today's world. Condition No. 8, however, expressly excludes a probationary pharmacist from serving in the capacity of a consultant. In formulating the Disciplinary Guidelines, therefore, the board not only contemplated the concept of a pharmacist on probation serving as a consultant; it flatly rejected it. On this record, there is no reason to depart from the standard conditions of probation.

Costs

13. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondent displayed a good faith belief in the merits of his position; he did not raise a colorable challenge to the proposed discipline, except that he was successful at obtaining probation as opposed to revocation; respondent has the financial ability to make payments; and the scope of the investigation was appropriate in light of the misconduct.

Respondent argued that the attorney general rates and ultimate calculations were wrong because some showed the attorneys billed out at \$170 and others billed out at \$220. According to complainant, there was a rate change during the time the case was pending, which explains the two different rates. Thus, this argument was rejected. Respondent also argued that quarter-hour billing as opposed to billing in increments of 10 minutes is "not standard in the industry." This is, however, standard in state agency legal billing. Finally, respondent argued that 9.2 hours spent in settlement negotiations as reported on the certification of costs is too high. Complainant argued that the 9.2 hours not only includes telephone calls and discussions, but also includes reviewing pleadings, discussing it with the client, and

preparing written correspondence to the client. Therefore, 9.2. hours is not unreasonable for settlement negotiations under these circumstances.

The costs are therefore found to be \$7,257.50.

ORDER

Pharmacist License Number RPH 39708, issued to Fidel Hector Valenzuela, is revoked. However, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state

or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

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

4. Cooperate with Board Staff

Respondent shall timely 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 probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely 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. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6728 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 ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s),

and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6728, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 6728, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6728, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 6728, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

7. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Restrictions on Supervision and Oversight of Licensed Facilities

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$7,257.50. Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

10. 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.

11. Status of License

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

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

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.

13. Practice Requirement – Extension of Probation

Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

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 the board shall provide notice to respondent that 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. The board or its designee may post a notice of the extended probation period on its website.

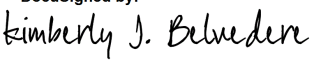
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry

out the disciplinary order that was stayed. If a Petition to Revoke Probation or an Accusation is filed against respondent during probation, or the preparation of an Accusation or Petition to Revoke Probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the Petition to Revoke Probation or Accusation is heard and decided.

15. Completion of Probation

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

DATE: July 3, 2020

DocuSigned by:

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 6728

14 **FIDEL HECTOR VALENZUELA**
15 **655 Gregory Cir.**
Corona, CA 92881

ACCUSATION

16 **Pharmacist License No. RPH 39708**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about September 9, 1985, the Board of Pharmacy issued Pharmacist License
24 Number RPH 39708 to Fidel Hector Valenzuela (Respondent). The Pharmacist License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on February
26 28, 2021, unless renewed.

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4. Section 4300, subdivision (a), of the Code states, “Every license issued may be suspended or revoked.”

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

6. Section 490 of the Code states:

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

///

1 7. Section 493 of the Code states:

2 (a) Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 (b) As used in this section, "license" includes "certificate," "permit,"
13 "authority," and "registration."

14 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
15 2021, is repealed.

16 8. Section 4301 of the Code states:

17 The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been issued by mistake. Unprofessional
19 conduct includes, but is not limited to, any of the following:

20 ...

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

24 ...

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

44 ...

1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section 1769, subdivision (c), states:

3 (c) When considering the suspension or revocation of a facility or a personal
4 license on the ground that the licensee or the registrant has been convicted of a crime,
5 the board, in evaluating the rehabilitation of such person and his present eligibility for
6 a license will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

13 10. California Code of Regulations, title 16, section 1770, states:

14 For the purpose of denial, suspension, or revocation of a personal or facility
15 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
16 Professions Code, a crime or act shall be considered substantially related to the
17 qualifications, functions or duties of a licensee or registrant if to a substantial degree it
18 evidences present or potential unfitness of a licensee or registrant to perform the
19 functions authorized by his license or registration in a manner consistent with the public
20 health, safety, or welfare.

21 **COST RECOVERY**

22 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 **FACTUAL ALLEGATIONS**

12. On or about August 9, 2018, in a criminal proceeding titled *United States of America*
v. Fidel Valenzuela, in United States District Court, Eastern District of Texas,
case number 6:18CR09, Respondent was convicted by his plea of guilty of violating Title 18 of
the United States Code, section 1952, interstate transportation in aid of racketeering/bribery, a
felony.

1 13. The facts that led to the conviction are that beginning in or around January 2009 and
2 continuing through in or about May 2013, Respondent used a facility in interstate commerce,
3 namely an electronic funds transfer, with the intent to promote, manage, establish, carry on, and
4 facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that
5 is, bribery in violation of California Penal Code section 641.3.

6 14. On April 1, 2013, Respondent used an electronic funds transfer to receive payment
7 from Company A with the intent to carry out a bribe.

8 15. On May 31, 2013, subsequent to the receipt of the payment from Company A,
9 Respondent knowingly and willfully made a payment to Individual B with the intent to carry on a
10 bribe.

11 16. Respondent received \$304,374.15 for assisting with the bribe between Company A
12 and Individual B.

13 17. On or about August 9, 2018, Respondent was sentenced to 4 years probation.
14 Respondent was further ordered to forfeit \$304,374.15, and all traceable interests and proceeds.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Commission of Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

17 18. Respondent has subjected his license to disciplinary action under section 4301,
18 subdivision (f), of the Code for unprofessional conduct in that beginning in or around January
19 2009 and continuing through in or about May 2013, he committed acts of moral turpitude,
20 dishonesty, fraud, deceit, and corruption, as described in paragraphs 12 to 17, incorporated here
21 by this reference.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(August 9, 2019 Criminal Conviction for Interstate and Foreign Travel or Transportation in**

24 **Aid of Racketeering Enterprises)**

25 19. Respondent has subjected his license to disciplinary action under sections 490 and
26 4301, subdivision (l), of the Code, in that he was convicted of a crime that is substantially related
27 to the qualifications, functions, and duties of a licensed pharmacist, as described in paragraphs 12
28 to 17, incorporated here by this reference.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 39708, issued to Respondent Fidel Hector Valenzuela;
2. Ordering Respondent Fidel Hector Valenzuela to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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