

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

**In the Matter of the Petition for Early Termination of
Probation By:**

RANDY OUELLETTE, PharmD, Petitioner

Agency Case No. 6853

OAH No. 2023120327

DECISION

This matter was heard by video conference before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on December 13, 2023. Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), presided.

Kristina Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Randy Ouellette (petitioner) appeared on his own behalf.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on December 13, 2023.

FACTUAL FINDINGS

Background and Procedural History

1. On March 10, 2021, the Board issued petitioner pharmacist license RPH 84113 (license). The license will expire on February 28, 2025, unless renewed.

2. On December 13, 2019, the Board's Executive Officer (complainant) issued an Accusation against petitioner seeking to discipline his intern pharmacist license. Complainant alleged that on April 20, 2019, petitioner was arrested for possession of MDMA and cocaine, schedule I and II controlled substances, while at the Coachella music festival. Petitioner was arrested and charged with possession of the drugs for personal use.

3. Petitioner agreed to a Stipulated Settlement with the Board under which he admitted to the truth of each charge in the Accusation. His intern license was revoked. The revocation was stayed and petitioner's intern license placed on probation for five years, subject to various terms and conditions, including obey all laws, submit quarterly reports, not supervise interns, not serve as a Pharmacist-in-Charge or consultant, reimburse the Board \$3,000, for investigation and enforcement costs, complete continuing education, participate in the Pharmacists Recovery Program (PRP), submit to random drug and alcohol screening, abstain from using drugs and alcohol, practice under the supervision of a licensed pharmacist not on probation with the Board, and complete a Board-approved ethics course. Petitioner also agreed that if his pharmacist license was issued during probation, the license would be revoked, the revocation stayed, and the license placed on probation for the remainder of the five years. The Board adopted the Stipulated Settlement effective March 5, 2021.

Petition for Early Termination of Probation

4. On May 29, 2023, petitioner filed the instant Petition for Early Termination of Probation (Petition). Petitioner has not previously applied to terminate probation. In support of his Petition, petitioner submitted a written statement, letters of support, and proof of continuing education. He has complied with all terms of probation except he missed daily check-ins for drug and alcohol testing on December 27, 2021, and July 9, 2022. Petitioner never missed a test and never tested positive.

5. Petitioner explained he went to the Coachella music festival with friends and brought the MDMA and cocaine with him for his friends' use. He acknowledged his poor judgment and believes his use of alcohol that day made his decision-making even worse. Petitioner is grateful the court allowed him to enter the diversion program under Penal Code 1000. Through that program, he attended Alcoholics Anonymous (AA), attended 10 educational sessions with other drug users, and was randomly tested for drugs and alcohol. Petitioner successfully completed the diversion program in October 2020, at which time the charges against him were dismissed.

6. Petitioner was suspended from pharmacy school when he was arrested. Walmart, his employer, allowed him to continue working. While working, petitioner stayed in contact with his pharmacy school, which allowed him to return and complete his final two rotations so that he could graduate. Once he was issued his license, Walmart terminated him due to his probationary status.

7. After leaving Walmart, petitioner focused on his "growth as a person." He watched motivational videos and read self-help books. He understood that his anger and his "why me?" attitude toward his arrest and probation were not serving him. Petitioner began studying more and learning about himself. He experienced what he

termed a “growth spurt” in his maturity and self-awareness. Several months after Walmart terminated petitioner’s employment, the pharmacy where he completed his final rotation for pharmacy school offered him a permanent position.

8. Petitioner stated he is grateful for the Board probation, PRP, and the self-improvement he has experienced as a result. At 5:00 a.m. every day, he logs in to see if he must test for drugs and alcohol that day. The discipline of this practice has spread to other areas of his life. To manage stress, he works out at a gym six days per week, runs once per week, and changed his diet. He no longer uses drugs or alcohol.

9. Petitioner’s arrest, probation, and sobriety have made him feel like he can “handle hard things.” About one year after petitioner started probation, his father was diagnosed with cancer of the mouth. Petitioner began helping to care for his father, who was hospitalized due to complications from radiation, and his mother, who contracted Covid-19. He was driving among the hospital for his father, their home for his mother, and work where he was administering hundreds of Covid-19 vaccines per day. In the midst of this, he forgot two of his daily check-ins for drug and alcohol testing.

10. Petitioner is his parents’ sole financial support. He also continues to help them through his father’s medical issues.

11. Petitioner loves being a pharmacist. If his probation is terminated, he intends to pursue a residency program and obtain an advanced practice license.

Letters of Support

12. Petitioner submitted eight letters in support of his Petition. Collectively, the letters portray petitioner’s journey from working at the meat department of

Walmart, to stocking the pharmacy shelves, to being a pharmacy clerk, then pharmacy technician and intern, and finally a pharmacist. Petitioner has studied, applied himself, and inspired others to be better pharmacists and people. He is a caring, skilled pharmacist who has adeptly served at several pharmacies, including a pharmacy that serves hospice patients.

13. Each letter details the profound growth petitioner has undergone since his arrest and Board probation. The authors describe petitioner's dedication to his work that is evidenced by his hard work and discipline as well as his self-study in his own time. He volunteers his time to his pharmacy school and pharmaceutical fraternity, organizes blood drives and related fundraisers, and raises money to provide naloxone, which reverses the effects of opioids, to underserved patient communities.

Analysis

14. Petitioner has served over half of his five-year probation. In that time, he has complied with all probation requirements except for missing two drug and alcohol check-ins. His explanation for his missed drug and alcohol check-ins was credible. Petitioner has been randomly tested for drugs and alcohol since he began the court diversion program in 2019 and has had no positive tests.

15. Petitioner's honest and contrite testimony as well as the many letters he submitted demonstrate the circumstances underlying his arrest were isolated incidents. Petitioner has dedicated himself to his growth and profession and has much to offer the field of pharmacy. He has the support of his family, friends, and colleagues and has developed a disciplined healthy lifestyle that aids his work as a pharmacist. Notably, petitioner is the sole financial support for his parents and for that and many other reasons explained above, he will not risk his pharmacy license again.

16. When all the evidence is considered, no further public interest will be served by continuing petitioner on probation. Petitioner demonstrated he is capable of practicing as a pharmacist without restrictions, and without harm to the public.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a license, including early termination of probation, the burden is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Business and Professions Code section 4309, subdivision (d), sets forth the following factors to consider when the Board reviews a petition for early termination of probation:

- (1) All the activities of the petitioner since the disciplinary action was taken.
- (2) The offense for which the petitioner was disciplined.
- (3) The petitioner's activities during the time the license was in good standing.
- (4) The petitioner's documented rehabilitative efforts.
- (5) The petitioner's general reputation for truth and professional ability.

3. All the relevant criteria set forth in Business and Professions Code section 4309, subdivision (d), have been considered. Petitioner established that it is consistent with the public health, safety, and welfare to terminate his probation.

ORDER

1. Randy Ouellette's Petition for Early Termination of Probation is GRANTED.

This decision shall become effective on March 1, 2024.

It is so ORDERED on January 31, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**RANDY KEVIN OUELLETTE,
Pharmacy Technician Registration No. TCH 135321
Intern Pharmacist License No. INT 40873**

Respondent

Case number 6853

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 March 5, 2021.

It is so ORDERED on February 3, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name and title.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9415
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 6853

14 **RANDY KEVIN OUELLETTE**
15 **2535 S. Vicentia Avenue**
Corona, CA 92882

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Pharmacy Technician Registration No. TCH**
135321
17 **Intern Pharmacist License No. INT 40873**

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
24 (Board). She brought this action solely in her official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Diane De Kervor, Deputy
26 Attorney General.

27 ///

28 ///

2. Respondent Randy Kevin Ouellette (Respondent) is represented in this proceeding by attorney Elizabeth M. Brady, whose address is: 8880 Rio San Diego Drive, Suite 800, San Diego, CA 92108-1642.

3. On or about October 1, 2013, the Board issued Pharmacy Technician Registration No. TCH 135321 to Randy Kevin Ouellette (Respondent). The Pharmacy Technician Registration expired on February 28, 2019, and has not been renewed.

4. On or about September 12, 2017, the Board issued Intern Pharmacist License No. INT 40873 to Randy Kevin Ouellette (Respondent). The Intern Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 6853, and will expire on May 31, 2021, unless renewed.

JURISDICTION

5. Accusation No. 6853 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 23, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 6853 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6853. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 6853.

11. Respondent agrees that his Pharmacy Technician Registration and Intern Pharmacist License are subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

5 16. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Board may, without further notice or formal proceeding, issue and enter the following
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 135321 is
10 surrendered. The surrender of respondent's license and the acceptance of the surrendered license
11 by the board shall constitute the imposition of discipline against respondent. This decision
12 constitutes a record of discipline and shall become a part of respondent's license history with the
13 board.

14 IT IS FURTHER ORDERED that Intern Pharmacist License No. INT 40873 issued to
15 Respondent Randy Kevin Ouellette is revoked. However, the revocation of the Intern Pharmacist
16 License is stayed and Respondent is placed on probation for five (5) on the following terms and
17 conditions on the following terms and conditions:

18 IT IS FURTHER HEREBY ORDERED that, should a Pharmacist License be subsequently
19 issued to Respondent upon satisfaction of statutory and regulatory requirements for issuance
20 thereof, then that license shall be immediately revoked, with the revocation stayed and
21 Respondent placed on probation for the remainder of the five (5) years originally ordered (plus
22 any extensions), on the following terms and conditions.

23 **1. Obey All Laws**

24 Respondent shall obey all state and federal laws and regulations.

25 Respondent shall report any of the following occurrences to the board, in writing, within
26 seventy- two (72) hours of such occurrence:
27
28

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.

1 **4. Cooperate with Board Staff**

2 Respondent shall timely cooperate with the board's inspection program and with the board's
3 monitoring and investigation of respondent's compliance with the terms and conditions of his
4 probation, including but not limited to: timely responses to requests for information by board
5 staff; timely compliance with directives from board staff regarding requirements of any term or
6 condition of probation; and timely completion of documentation pertaining to a term or condition
7 of probation. Failure to timely cooperate shall be considered a violation of probation.

8 **5. Continuing Education – Pharmacist License Only**

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

11 **6. Reporting of Employment and Notice to Employers**

12 During the period of probation, respondent shall notify all present and prospective
13 employers of the decision in case number 6853 and the terms, conditions and restrictions imposed
14 on respondent by the decision, as follows:

15 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
16 undertaking any new employment, respondent shall report to the board in writing the name,
17 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
18 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in- charge, designated
19 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
20 schedule, if known. Respondent shall also include the reason(s) for leaving the prior
21 employment. Respondent shall sign and return to the board a written consent authorizing the
22 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and
23 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,
24 concerning respondent's work status, performance, and monitoring. Failure to comply with the
25 requirements or deadlines of this condition shall be considered a violation of probation.

26 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
27 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)
28 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other

1 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
2 board in writing acknowledging that the listed individual(s) has/have read the decision in case
3 number 6853, and terms and conditions imposed thereby. If one person serves in more than one
4 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
5 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
6 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
7 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
8 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
9 in case number 6853, and the terms and conditions imposed thereby.

10 If respondent works for or is employed by or through an employment service, respondent
11 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
12 of the decision in case number 6853, and the terms and conditions imposed thereby in advance of
13 respondent commencing work at such licensed entity. A record of this notification must be
14 provided to the board upon request.

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

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

24 "Employment" within the meaning of this provision includes any full-time, part-time,
25 temporary, relief, or employment/management service position as a intern pharmacist, or any
26 position for which a intern pharmacist is a requirement or criterion for employment, whether the
27 respondent is an employee, independent contractor or volunteer.

28 ///

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

2 Respondent shall further notify the board in writing within ten (10) days of any change in
3 name, residence address, mailing address, e-mail address or phone number.

4 Failure to timely notify the board of any change in employer, name, address, or phone
5 number shall be considered a violation of probation.

6 **8. Restrictions on Supervision and Oversight of Licensed Facilities – Pharmacist**
7 **License Only**

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

12 **9. Reimbursement of Board Costs**

13 As a condition precedent to successful completion of probation, respondent shall pay to the
14 board its costs of investigation and prosecution in the amount of \$3,000.00. Respondent shall
15 make said payments as follows:

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

19 Respondent shall be permitted to pay these costs in a payment plan approved by the board
20 or its designee, so long as full payment is completed no later than one (1) year prior to the end
21 date of probation.

22 **10. Probation Monitoring Costs**

23 Respondent shall pay any costs associated with probation monitoring as determined by the
24 board each and every year of probation. Such costs shall be payable to the board on a schedule as
25 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
26 be considered a violation of probation.

27 ///

28 ///

1 **11. Status of License**

2 Respondent shall, at all times while on probation, maintain an active, current Intern
3 Pharmacy License or Pharmacy License with the board, including any period during which
4 suspension or probation is tolled. Failure to maintain an active, current license shall be
5 considered a violation of probation.

6 If respondent's Pharmacy Technician Registration expires or is cancelled by operation of
7 law or otherwise at any time during the period of probation, including any extensions thereof due
8 to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
9 terms and conditions of this probation not previously satisfied.

10 **12. License Surrender While on Probation/Suspension**

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

19 Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall
20 license, including any indicia of licensure not previously provided to the board within ten (10)
21 days of notification by the board that the surrender is accepted if not already provided.
22 Respondent may not reapply for any license from the board for three (3) years from the effective
23 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
24 of the date the application for that license is submitted to the board, including any outstanding
25 costs.

26 **13. Practice Requirement – Extension of Probation – Pharmacist License Only**

27 Except during periods of suspension, respondent shall, at all times while on probation, be
28 employed as a Pharmacist for a minimum of eighty (80) hours per calendar month in California.

1 Any month during which this minimum is not met shall extend the period of probation by one
2 month. During any such period of insufficient employment, respondent must nonetheless comply
3 with all terms and conditions of probation, unless respondent receives a waiver in writing from
4 the board or its designee.

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

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

18 **14. Practice Requirement – Extension of Probation – Intern Pharmacist License**
19 **Only**

20 Except during periods of suspension, respondent shall, at all times while on probation, be
21 employed as an Intern Pharmacist for a minimum of forty (40) hours per calendar month in
22 California. Any month during which this minimum is not met shall extend the period of
23 probation by one month. During any such period of insufficient employment, respondent must
24 nonetheless comply with all terms and conditions of probation, unless respondent receives a
25 waiver in writing from the board or its designee.

26 **15. Violation of Probation**

27 If respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and the board shall provide notice to respondent

1 that probation shall automatically be extended, until all terms and conditions have been satisfied
2 or the board has taken other action as deemed appropriate to treat the failure to comply as a
3 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
4 board or its designee may post a notice of the extended probation period on its website.

5 If respondent violates probation in any respect, the board, after giving respondent notice
6 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
7 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
8 probation, or the preparation of an accusation or petition to revoke probation is requested from
9 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
10 probation shall be automatically extended until the petition to revoke probation or accusation is
11 heard and decided.

12 **16. Completion of Probation**

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

15 **17. Drug and Alcohol Testing**

16 Respondent, at his own expense, shall participate in testing as directed by the board or its
17 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
18 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
19 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its
20 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
21 informed otherwise in writing by the board or its designee. Respondent may be required to
22 participate in testing for the entire probation period and frequency of testing will be determined
23 by the board or its designee.

24 By no later than thirty (30) days after the effective date of this decision, respondent shall
25 have completed all of the following tasks: enrolled and registered with an approved drug and
26 alcohol testing vendor; provided that vendor with any documentation, and any information
27 necessary for payment by respondent; commenced testing protocols, including all required
28 contacts with the testing vendor to determine testing date(s); and begun testing. At all times,

1 respondent shall fully cooperate with the testing vendor, and with the board or its designee, with
2 regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to
3 cooperate timely shall be considered a violation of probation.

4 Respondent may be required to test on any day, including weekends and holidays.
5 Respondent is required to make daily contact with the testing vendor to determine if a test is
6 required, and if a test is required must submit to testing on the same day.

7 Prior to any vacation or other period of absence from the area where the approved testing
8 vendor provides services, respondent shall seek and receive approval from the board or its
9 designee to use an alternate testing vendor to ensure testing can occur. Upon approval,
10 respondent shall enroll and register with the approved alternate drug testing vendor, provide to
11 that alternate vendor any documentation required by the vendor, including any necessary payment
12 by respondent. During the period of absence of the area, respondent shall commence testing
13 protocols with the alternate vendor, including required daily contacts with the testing vendor to
14 determine if testing is required, and required testing. Any failure to timely seek or receive
15 approval from the board or its designee, or to timely enroll and register with, timely commence
16 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be
17 considered a violation of probation.

18 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its
19 designee may require respondent to timely provide documentation from a licensed practitioner
20 authorized to prescribe the detected substance demonstrating that the substance was administered
21 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such
22 documentation shall be provided by respondent within ten (10) days of being requested.

23 Any of the following shall be considered a violation of probation and shall result in
24 respondent being immediately suspended from practice as a intern pharmacist until notified by the
25 board in writing that he may resume practice: failure to timely complete all of the steps required
26 for enrollment/registration with the drug testing vendor, including making arrangements for
27 payment; failure to timely commence drug testing protocols; failure to contact the drug testing
28 vendor as required to determine testing date(s); failure to test as required; failure to timely supply

1 documentation demonstrating that a detected substance was taken pursuant to a legitimate
2 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
3 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the
4 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
5 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
6 controlled substance or dangerous drug absent documentation that the detected substance was
7 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
8 shall inform respondent of the suspension and inform him to immediately leave work, and shall
9 notify respondent's employer(s) and work site monitor(s) of the suspension.

10 During any such suspension, respondent shall not enter any pharmacy area or any portion of
11 the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug
12 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
13 any area where dangerous drugs and/or dangerous devices or controlled substances are
14 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
15 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
16 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
17 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
18 dangerous devices and controlled substances.

19 During any such suspension, respondent shall not engage in any activity that requires the
20 professional judgment of and/or licensure as an intern pharmacist. Respondent shall not direct or
21 control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling,
22 or retailing of dangerous drugs and/or dangerous devices.

23 Failure to comply with any such suspension shall be considered a violation of probation.
24 Failure to comply with any requirement or deadline stated by this term shall be considered a
25 violation of probation.

26 Should respondent fail a drug test, or test positive for any substance tested for in this term,
27 Respondent is ordered to participate in the Pharmacist Recovery Program, term 21, below.

28 ///

1 **18. Notification of Departure**

2 Prior to leaving the probationary geographic area designated by the board or its designee for
3 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
4 writing of the dates of departure and return. Failure to comply with this provision shall be
5 considered a violation of probation.

6 **19. Abstain from Drugs and Alcohol**

7 Respondent shall completely abstain from the possession or use of alcohol, controlled
8 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
9 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
10 necessary part of treatment. Respondent shall ensure that he is not in the same physical location
11 as individuals who are using illicit substances even if respondent is not personally ingesting the
12 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
13 substances, or their associated paraphernalia for which a legitimate prescription has not been
14 issued as a necessary part of treatment, or any physical proximity to persons using illicit
15 substances, shall be considered a violation of probation.

16 **20. Prescription Coordination and Monitoring of Prescription Use**

17 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
18 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
19 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
20 history with the use of illicit drugs, controlled substances, and/or dangerous drugs, and who will
21 coordinate and monitor any prescriptions for respondent for dangerous drugs and/or dangerous
22 devices, controlled substances or mood-altering drugs. The approved practitioner shall be
23 provided with a copy of the board's Accusation and decision. A record of this notification must
24 be provided to the board or its designee upon request. Respondent shall sign a release authorizing
25 the practitioner to communicate with the board or its designee about respondent's treatment(s).
26 The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to
27 the board on a quarterly basis for the duration of probation regarding respondent's compliance
28 with this condition. If any substances considered addictive have been prescribed, the report shall

1 identify a program for the time limited use of any such substances. The board or its designee may
2 require that the single coordinating physician, nurse practitioner, physician assistant or
3 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.
4 Should respondent, for any reason, cease supervision by the approved practitioner, respondent
5 shall notify the board or its designee immediately and, within thirty (30) days of ceasing
6 supervision, submit the name of a replacement physician, nurse practitioner, physician assistant,
7 or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
8 timely submit the selected practitioner or replacement practitioner to the board or its designee for
9 approval, or to ensure the required quarterly reporting thereby, shall be considered a violation of
10 probation.

11 If at any time an approved practitioner determines that respondent is unable to practice
12 safely or independently as a intern pharmacist, the practitioner shall notify the board or its
13 designee immediately by telephone and follow up by written letter within three (3) working days.
14 Upon notification from the board or its designee of this determination, respondent shall be
15 automatically suspended and shall not resume practice as a intern pharmacist until notified by the
16 board or its designee that practice may be resumed.

17 During any suspension, respondent shall not enter any pharmacy area or any portion of the
18 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
19 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
20 any area where dangerous drugs and/or dangerous devices or controlled substances are
21 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
22 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
23 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
24 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
25 dangerous devices and controlled substances. Respondent shall not resume practice until notified
26 by the board.

27 During any suspension, respondent shall not engage in any activity that requires the
28 professional judgment and/or licensure as a intern pharmacist. Respondent shall not direct or

control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

21. Pharmacists Recovery Program (PRP)

Should respondent fail a drug test, or test positive for any substance tested for in term 17, Respondent is ordered to participate in the Pharmacist Recovery Program. By no later than ten (10) days after notification of the failed test, respondent shall have completed all of the following: contacted the Pharmacists Recovery Program (PRP) for evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as any addendums required or suggested by the PRP; successfully completed registration for any drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully participate in the PRP and complete the treatment contract and any addendums required or suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362 (a)(2). Respondent shall successfully participate in and complete his or her current contract and any subsequent addendums with the PRP.

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

Any of the following shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation:

Failure to contact, complete enrollment, and execute and return the treatment contract with the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as directed by the PRP;

1 Failure to complete registration for any drug or alcohol testing mandated by the treatment
2 contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10)
3 days of the effective date of the decision as directed by the PRP;

4 Failure to comply with testing protocols regarding daily check-in and/or failure to complete
5 a mandated test as directed by the PRP;

6 Any report from the PRP of material non-compliance with the terms and conditions of the
7 treatment contract and/or any addendum(s); or

8 Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

9 Respondent may not resume the practice of pharmacy until notified by the board in writing.

10 Probation shall be automatically extended until respondent successfully completes the PRP.
11 The board will provide notice of any such suspension or extension of probation.

12 During any suspension, respondent shall not enter any pharmacy area or any portion of the
13 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
14 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
15 any area where dangerous drugs and/or dangerous devices or controlled substances are
16 maintained. Respondent shall not practice as a intern pharmacist nor do any act involving drug
17 selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor
18 shall respondent manage, administer, or be a consultant to any licensee of the board, or have
19 access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs
20 and/or dangerous devices or controlled substances.

21 During any suspension, respondent shall not engage in any activity that requires the
22 professional judgment of and/or licensure as a intern pharmacist. Respondent shall not direct or
23 control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling,
24 or retailing of dangerous drugs and/or dangerous devices or controlled substances.

25 Failure to comply with any requirement or deadline stated by this term shall be considered a
26 violation of probation.

27 ///

28 ///

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

2
3
4
5
6
7
8
9

10

11
12
13
14
15

16
17

18

19

19
20
21

22
23

24

25
26
27
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: December 4, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

SD2019800886
82502514.docx

Exhibit A

Accusation No. 6853

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9415
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 6853

13 **RANDY KEVIN OUELETTE**
14 **2535 S. Vicentia Avenue**
Corona, CA 92882

ACCUSATION

15 **Pharmacy Technician Registration No.**
16 **TCH 135231**

17 **Intern Pharmacist License No.**
18 **INT 40873**

Respondent.

19
20 **PARTIES**

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

24 2. On or about October 1, 2013, the Board issued Pharmacy Technician Registration
25 Number TCH 135231 to Randy Kevin Ouelette (Respondent). The Pharmacy Technician
26 Registration expired on February 28, 2019, and has not been renewed.

27 ///

28 ///

3. On or about September 12, 2017, the Board issued Intern Pharmacist License Number INT 40873 to Respondent. The Intern Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

JURISDICTION

4. This Accusation 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.

5. Section 4300 of the Code states:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper....

6. Section 4300.1 of the Code states:

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.

STATUTORY PROVISIONS

7. Section 4060 of the Code states:

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

paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer....

8. Section 4301 of the Code states:

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

...

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

COST RECOVERY

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

DEFINITIONS

10. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2).

11. Methylenedioxymethamphetamine (MDMA), commonly referred to as "ecstasy," is a Schedule I controlled substance as defined in Health and Safety Code section 11054, subdivision (d).

FACTUAL ALLEGATIONS

12. On April 20, 2019, agents with the California Department of Alcoholic Beverage Control (ABC) were on duty at the Coachella Valley Music & Arts Festival when an agent witnessed Respondent arguing with a security guard. Respondent was observed holding a small plastic bag containing several blue pills. An ABC agent made contact with Respondent, who informed the agent that the plastic bag belonged to him and that it contained MDMA pills. Respondent was arrested for possession of MDMA, in violation of Health and Safety Code section 11377, subdivision (a). During a search incident to the arrest, Respondent advised the

1 ABC agents that he was in possession of cocaine inside his shoe. Agents recovered a small
2 plastic bag containing a white powdery substance from Respondent's shoe and Respondent was
3 also charged with possession of cocaine (Health & Saf. Code section 11350, subd. (a)).

4 13. As a result of the arrest, on or about August 14, 2019, in a criminal proceeding
5 entitled *People of the State of California v. Randy Kevin Ouelette AKA Randy K. Ouelette*, in
6 Riverside County Superior Court, case number INM1905123, Respondent was charged with
7 misdemeanor counts of unlawful possession of MDMA (Health & Saf. Code section 11377, subd.
8 (a)) and unlawful possession of cocaine (Health & Saf. Code section 11350, subd. (a)). On
9 September 16, 2019, the court deferred entry of judgment pursuant to Penal Code section 1000
10 and Respondent was ordered to enroll in a drug diversion program. Criminal proceedings remain
11 suspended pending successful completion of the drug diversion program.

12 **CAUSE FOR DISCIPLINE**

13 **(Violation of State Laws Regulating Controlled Substances)**

14 14. Respondent has subjected his license to disciplinary action for unprofessional conduct
15 under Code section 4301, subdivision (j), in that Respondent violated state laws regulating
16 controlled substances. Specifically, Respondent violated Code section 4060 (unlawful possession
17 of a controlled substance), and Health and Safety Code sections 11550, subdivision (a) and
18 11377, subdivision (a), as described above in paragraphs 11 and 12, and incorporated here by this
19 reference.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 135231,
24 issued to Respondent Randy Kevin Ouelette;

25 2. Revoking or suspending Intern Pharmacist License Number INT 40873, issued to
26 Respondent Randy Kevin Ouelette;

27 ///

28 ///

1 3. Ordering Respondent Randy Kevin Ouelette to pay the Board of Pharmacy the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and,

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

5
6 DATED: December 13, 2019



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

10 SD2019800886
11 72055836.docx