

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

In the Matter of the Accusation Against:

MICHAEL ANTHONY ABRAM, Respondent

Pharmacist License No. RPH 64451

Case No. 7470

OAH No. 2023060037

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on May 26, 2024.

It is so ORDERED on April 26, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh", is written over a light blue rectangular background.

Seung W. Oh, Pharm.D.
Board President

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In the Matter of the Accusation against:

MICHAEL ANTHONY ABRAM,

Pharmacist License No. RPH 64451

Respondent.

Agency Case No. 7470

OAH No. 2023060037

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on December 11, 2023.

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

Respondent Michael Anthony Abram represented himself.

The Administrative Law Judge received oral and documentary evidence. The record was held open until December 22, 2023, to allow respondent to provide

evidence of an award he received for Pharmacist of the Year. On December 12, 2023, respondent submitted three exhibits: a document reflecting his nomination for Pharmacist of the Year, which was marked as Exhibit A; what respondent described as an end-of-year evaluation by Walmart Pharmacy Manager Trang Bui, marked as Exhibit B; and a text message exchange with Manager Bui regarding the award, marked as Exhibit C. On December 20, 2023, complainant filed an objection to the admission of Exhibits A, B, and C into evidence. The objection was marked for identification as Exhibit 11. Complainant objected to the admission of Exhibits A, B, and C on grounds they were untimely, exceeded the scope of the Administrative Law Judge's request, constituted hearsay, and did not show respondent received any award. Complainant's objections are overruled as to Exhibits A and C. Regarding Exhibits A and C, respondent filed the documents within the court-ordered deadline. Although the documents did not include an actual award, Exhibit A demonstrates respondent was nominated for the Pharmacist of the Year award and Exhibit C contains Walmart Pharmacy Manager Bui's confirmation respondent received the award and why a copy could not be forwarded. Complainant demonstrated no prejudice to the submission of these documents, and under Government Code 11513, they are admitted as administrative hearsay. Exhibit B is not admitted because it is unsigned and undated, and the document does not indicate its author.

The record closed and the matter was submitted for decision on December 22, 2023.

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SUMMARY

Complainant seeks to discipline respondent's pharmacist license for unprofessional conduct based on his theft of Schedule II controlled substances. Complainant clearly and convincingly proved respondent stole five pills of Percocet and five pills of Dilaudid in July 2022. Respondent presented mitigating and rehabilitation evidence. He admitted and took responsibility for his theft. He also acknowledged the wrongfulness of his actions. No evidence was presented showing respondent suffers from substance abuse or addiction. Based on the absence of prior discipline or criminal convictions over respondent's 13 years as a licensed pharmacist, respondent's insight into his misconduct, and respondent's expression of remorse, public protection does not require revocation of respondent's pharmacist license. Placing respondent's pharmacist license on probation with appropriate and tailored terms and conditions is sufficient for public protection.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 23, 2010, the Board issued Pharmacist License Number RPH 64451 to respondent. Respondent's license was in full force and effect at all times relevant to this matter. Respondent's license was set to expire on December 31, 2023.
2. Complainant served the Accusation, dated April 26, 2023, in her official capacity. Respondent timely filed a Notice of Defense, requesting a hearing.
3. All jurisdictional requirements were satisfied.

Stipulated Facts

4. On June 2, 2023, the parties entered into a stipulation, admitted as Exhibit 10, regarding the material facts in this case. Per the stipulation, respondent admitted the truth of the following allegations in the Accusation:

- In July 2022, respondent was employed as a pharmacist by a Walmart Pharmacy (Walmart) in San Luis Obispo, California.
- Respondent worked a pharmacist shift at Walmart on July 5, 2022. On that day, Walmart staff discovered a prescription for Dilaudid, which had been filled and was in the will-call bin, was five Dilaudid pills short. Staff were initially unable to determine the cause of the loss.
- Respondent worked a pharmacist shift at Walmart on July 25, 2022. On that day, Walmart staff discovered a different patient's filled prescription for Percocet was five pills short.
- Shortly after the July 25, 2022 incident, respondent was interviewed by Walmart compliance staff and falsely denied having diverted medications on July 5, and July 22, 2022. However, respondent later made the following statement to a Board investigator: "I admit that in July 2022, I took ten tablets of prescription strength analgesic medication to help treat an injury from my workplace."

- Respondent was terminated by Walmart in August 2022.

5. Respondent also admitted the truth of the allegations in the Accusation that his thefts on July 5 and July 25, 2022, subjected him to disciplinary action under the Business and Professions Code (Code) because he obtained and possessed controlled substances for his own personal use through fraud, deceit, misrepresentation, or subterfuge in violation of the Pharmacy Law and the Health and Safety Code. (Exhibit 10, p. A111.)

Testimony by Board Inspector Steven Kyle, Pharm.D.

6. Board Inspector Steven Kyle, Pharm.D., has been a California-licensed pharmacist since August 1996 and has worked as a Board inspector for nine years. As a Board inspector, Inspector Kyle performed over 400 Board investigations. Before joining the Board, Inspector Kyle worked as a pharmacist for several pharmacies for 18 years.

7. Inspector Kyle was assigned to investigate the alleged theft of Dilaudid and Percocet pills at Walmart after the Board received notification on August 25, 2022, of Walmart's termination of respondent on August 10, 2022, for theft of controlled substances. At hearing, Inspector Kyle explained Dilaudid, the brand name for hydromorphone, and Percocet, the brand name for oxycodone combined with acetaminophen, are both Schedule II controlled opioids used to ameliorate serious pain. Both substances have a high propensity for addiction. According to Inspector Kyle, a pharmacy must take special measures to secure Schedule II drugs to reduce the chance of diversion, including tracking the quantities of Schedule II drugs on the premises to the tablet.

8. At hearing, Inspector Kyle also explained the potential harm to patients by the diversion of Schedule II medication intended for them. As pharmacy patients rarely count the pills they receive, patients who receive pills from their pharmacy would not realize any pills were missing until they ran short of the medication. And, when the medication is a controlled Schedule II drug, as in the case here, the pharmacy would not refill the prescription. Moreover, any pharmacy audit conducted in response to the patient's complaint about the missing pills would not show any discrepancy. The patient therefore would not be able to obtain the medication they were prescribed to address their pain.

9. As part of his investigation into the alleged diversion, Inspector Kyle reviewed statements by various Walmart personnel and interviewed the Walmart Pharmacist in Charge (PIC) Trang Bui, a Walmart staff pharmacist, and a Walmart pharmacist technician. Inspector Kyle additionally conducted a telephone interview with respondent. Inspector Kyle reported his findings in an Investigation Report, dated November 29, 2022, and admitted as Exhibit 7. From his interviews, Inspector Kyle learned respondent was recently on a leave of absence due to severe back pain from July 14 to July 24, 2022. No evidence was offered challenging respondent's physical condition at the time.

10. In response to a telephone message left by Inspector Kyle, respondent called Inspector Kyle for a telephone interview on September 30, 2022. During that interview, respondent told Inspector Kyle he would be truthful about what had happened at Walmart and the events leading to his termination. Respondent said he had hurt his back sometime before July 5, 2022, was suffering from a herniated disc, and was only getting two hours of sleep at the time of the thefts. Because of staff illness and shortages at Walmart due to the COVID-19 pandemic, respondent felt he

needed to be present at the pharmacy and working despite his ongoing pain. Respondent told Inspector Kyle he made an error in judgment due to lack of sleep and the constancy of his pain. Respondent admitted to the thefts on July 5 and July 22, 2021, but he denied any other instances of diversion.

11. Inspector Kyle found respondent to be forthcoming about his theft and remorseful for his actions. According to Investigator Kyle, respondent did not blame anyone else for the missing pills. At the end of his interview, Investigator Kyle requested respondent provide a written statement regarding his misconduct and emailed him the Board's website link to the Pharmacist Recovery Program. (Exhibit 8.) Respondent submitted his written statement, signed under penalty of perjury and dated October 4, 2022, to the Board. (Exhibit 9.) Inspector Kyle stated respondent was one of the very few persons in the course of his 400 Board investigations who promptly responded to Inspector Kyle's telephone call seeking an interview and who provided a written statement as requested.

12. As part of his investigation, Inspector Kyle asked Walmart to perform various audits and inventory reconciliations to determine the scope of diversion by respondent or other employees. After reviewing the Walmart audits and reconciliations, Inspector Kyle concluded there was nothing to "suggest larger-scale diversion" by respondent or other employees. (Exhibit 7, p. A101.)

Respondent's Evidence

13. Respondent has dedicated his professional life to pharmacy. He holds a Doctor of Pharmacy degree and has worked as a pharmacist for more than 10 years. Before working at Walmart, respondent worked for CVS Pharmacy for four to five years and then worked for four to five years at a long-term care pharmacy. Respondent left

the long-term care pharmacy because he missed customer contact. Respondent started as a PIC at Walmart but changed his position to Staff Pharmacist because he did not like being a PIC. Respondent has never been disciplined by any employer. Nor has he ever been disciplined by the Board.

14. Respondent's testimony was consistent with the statement he gave to the Board, which was quoted in Inspector Kyle's report. The statement states as follows:

I admit that in July 2022, I took ten tablets of a prescription strength analgesic medication to help treat an injury from my workplace that is listed above. Now, I do not want to justify my actions but maybe I can give some reasoning and give details on the conditions that lead to my professional judgment being affected. I had been working 60-70 hours weekly due to the labor shortages and my staff falling ill to Covid-19. There were times where I was the only pharmacist standing when we would normally have three pharmacists on duty. We were also in the midst of a full store remodel so there was immense stress in the workplace. During this time, I had herniated a disc in my lower back which caused a lot of pain and rendered me unable to sleep no more than two hours a night. I tried to push through it given the amount that the staff and customers depend on me and to do the best job I can for the company. For 2021, I was awarded Pharmacist of the Year for the market and region (approx. 200 stores) to recognize the hard work and

dedication I have for the profession. With this new title I felt I had to strive to achieve even more regardless of the obstacles. However, I feel as I came undone by my own ambitions rather than taking care of myself and taking a step back to go through the necessary avenues to take care of my health.

I am in the process of enrolling in the Pharmacist Recovery Program to maybe gain some strategies to prevent this from ever happening again.

I love pharmacy. It gives me the opportunity to help my customers and serve my community. I hope this does not tarnish my record and I can get back to doing what I love as soon as possible.

(Exhibit 7, p. A97.)

15. Respondent did not ultimately enroll in the Pharmacy Recovery Program. Respondent reviewed the Pharmacy Recovery Program but decided the program was not appropriate for him because respondent does not consider himself a drug addict. Respondent testified he has no substance abuse or addiction issues. Respondent does not smoke or drink alcohol. He does not take drugs other than ibuprofen and caffeine. Respondent believes his then work schedule combined with his pain affected his judgment. If respondent had not been burnt out, respondent does not believe he would have stolen the drugs. Respondent has researched potential programs he believes may address his issues and noticed the Center for Disease Control has a

program for healthcare workers to prevent burnout. Respondent, however, has not enrolled in the program.

16. Respondent realizes he should have taken the time to see his physician to obtain a proper prescription for painkillers, instead of “taking shortcuts” (his words). Respondent believes he had a clinical need for the medication but acknowledged he did not take appropriate action. Respondent testified that by putting his needs last, he placed himself in a compromised position.

17. Respondent explained he rationalized his thefts by telling himself it was okay because people depended on him to continue working. He expressed genuine remorse for his misconduct. He recognized the two patients whose pills he took could have potentially suffered if the Walmart staff had not realized the loss and replaced the pills before they were delivered. He expressed sorrow for letting his customers and staff down. Respondent explained he lied initially to the Walmart investigators because he was scared and did not know what to do.

18. Respondent has not worked as a pharmacist since his termination from Walmart. He has spent the time on personal growth, particularly focusing on when it is important “to take a step back” (his words). During this period, respondent has also performed repairs on the home he shares with his partner of seven years, tutored pharmacy students, and taken care of his neighbor.

19. Respondent did not submit any letters of support or call any witnesses to vouch for his character. However, respondent offered documentation (Exhibit C) showing he was selected for Walmart Pharmacist of the Year for 2021 for his region, which, according to respondent, encompassed more than 200 stores. In support of respondent’s nomination, Chintan Shah, Pharm.D., the Walmart Market Health and

Wellness Director for Central California, noted respondent's attentiveness to customers, hard work, and willingness to pitch in at work. Dr. Shah wrote:

[Respondent] has completely transformed the customer service in Arroyo Grande, CA. After being one of the lowest 5-star/nps [net promoter score] in the company, with [respondent's] ability to connect with our customers and build relationships with our customers he has been able to turn the customer service at 2556 [Walmart pharmacy where respondent worked] around to one of the highest goal attainment % in the company. I am always receiving praise through Medallia comments, 800 compliments, and by customers in person when I visit the store. He treats everyone like his family. He is a hard working pharmacist who will help in any capacity asked of him, whether it be immunizations, filling, or ringing up customers at the register. He is truly a valuable asset to the company.

(Exhibit A.)

20. There was no evidence showing respondent was arrested for the thefts. Nor is there evidence respondent had any prior arrests or criminal convictions.

21. Respondent's testimony was respectful, candid, and professional. He expressed his love for the pharmacy field. He wants to return to his work as a pharmacist. Respondent believes he has a better understanding of what prompted his conduct and how to avoid it in the future. He would welcome any program that would provide him with additional tools to avoid burnout.

Costs

22. According to the Certification of Costs, the Office of the Attorney General spent 21.5 hours of attorney time and 1 hour of paralegal time on this matter, the costs of which totaled \$4,935. (Exhibit 4.) The Declaration by the Deputy Attorney General and the accompanying schedule of costs contained sufficient information to evaluate the actual costs incurred and the reasonableness of the costs including a description of the general tasks performed, the time spent on each task, and the method of calculating the cost.

23. Complainant certified the actual investigative costs incurred in this matter totaled \$5,742.75. (Exhibit 3.) However, the certification did not break down the costs by task and the time spent on each task as required by California Code of Regulations (CCR), title 1, section 1042, subdivision (b).

24. Respondent has not earned any income for 18 months. He has monthly mortgage payments of \$2,500 and student loans of \$30,000. Respondent financially supports himself and his girlfriend.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof utilized in proceedings to impose discipline on a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) The burden of proof is on complainant. (Evid. Code, § 500.)

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Applicable Law

2. The Board is authorized to enforce all aspects of Pharmacy Law contained in Code section 4000 et seq., regulations promulgated under the authority contained in Code section 4005, subdivision (a), and the Uniform Controlled Substances Act (Health and Safety Code sections 11000 et seq.). (Code, §§ 4000, 4011.)

3. Every license issued by the Board may be suspended or revoked. (Code, § 4300, subd. (a).) The expiration of a Board-issued license does not deprive the Board of jurisdiction to commence or proceed with any disciplinary investigation or to render a decision suspending or revoking a license. (Code, § 4300.1.)

4. The Board shall take disciplinary action against any holder of a license who is guilty of unprofessional conduct. Under Code section 4301, unprofessional conduct includes:

(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.

[¶ . . . ¶]

(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.

[¶ . . . ¶]

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

5. Code section 4060 provides:

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 [Code] Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to [Code] Section 2746.51, a nurse practitioner pursuant to [Code] Section 2836.1, or a physician assistant pursuant to [Code] Section 3502.1, or naturopathic doctor pursuant to [Code] 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 [Code] 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.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

6. Health and Safety Code section 11173, subdivision (a)(1) and (2), provides it is unlawful for any person to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge or by the concealment of a material fact.

7. Percocet and Dilaudid are Schedule II controlled substances under Health and Safety Code section 11055 and are considered dangerous drugs under Code section 4022.

Cause Exists to Impose Discipline

8. Complainant proved by clear and convincing evidence respondent diverted Dilaudid and Percocet, both controlled substances, for his own personal use. (Factual Findings 4–10.) In doing so, respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption. Cause therefore exists to impose discipline on respondent's license for unprofessional conduct under Code section 4301, subdivision (f). (Legal Conclusions 1–4.)

9. Complainant proved by clear and convincing evidence respondent obtained Dilaudid and Percocet through fraud, deceit, misrepresentation, and subterfuge in violation of Health and Safety Code section 11173, subdivision (a).

(Factual Findings 4–10; Legal Conclusions 6, 7.) Cause therefore exists to impose discipline on respondent’s license for unprofessional conduct based on his violation of Health and Safety Code section 11173 under Code section 4301, subdivisions (j) and (o). (Legal Conclusions 1–4.)

10. Complainant proved by clear and convincing evidence respondent possessed controlled substances, i.e., five pills of Dilaudid and five pills of Percocet, without a prescription in violation of Code section 4060. (Factual Findings 4–10; Legal Conclusions 5, 7.) Cause therefore exists to impose discipline on respondent’s license for unprofessional conduct based on his violations of state pharmacy law and laws regulating controlled substances and dangerous drugs under Code section 4301, subdivisions (j) and (o). (Legal Conclusions 1–4.)

Disposition

11. 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.)

12. 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 he is fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

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13. Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (§ 4001.1.)

14. As cause for discipline has been established, the appropriate discipline must be determined. The Board has promulgated Disciplinary Guidelines (Rev. 2/2017) (Guidelines) to assist in determining the appropriate level of license discipline. (Exhibit 5.) The Guidelines identify factors to be considered in determining the penalty to be imposed. Those factors include: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record, including the 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 respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; financial benefit to respondent from the misconduct; and other licenses held by respondent and license history of those licenses. (*Id.*, p. A42.)

15. Application of the Board's factors yields mixed results. Respondent's misconduct caused potential serious harm to his patients and to the public at large. The theft of controlled substances is not only a significant offense undermining the public trust in healthcare professionals but also reflects poor judgment and self-control. Respondent's theft was recent, occurring less than two years ago. His conduct

was intentional and knowing. However, respondent has no history of criminal conduct or license discipline. He has received no prior warnings from the Board, and until this incident, his pharmaceutical skills and communications with his customers and staff were lauded, culminating in a Pharmacist of the Year award. Respondent's violations focus exclusively on two incidents of limited pill theft in July 2022. Respondent was not arrested or charged with a crime. In mitigation, the thefts occurred during the throes of the COVID-19 pandemic, when Walmart was short-staffed, and respondent was in constant pain because of a herniated disk. There is no evidence respondent diverted the pills for financial gain or because of an addiction issue. Although respondent initially lied to Walmart personnel, he was forthright and cooperative with the Board's inspector. He took responsibility for his actions and showed insight into why he committed the thefts. (Factual Findings 11–21.)

16. The Board has identified four categories of violations and their associated recommended minimum and maximum penalties in the Disciplinary Guidelines. Category II violations include violations of the law governing controlled substances as found here, i.e., the diversion or self-administration of a small number of (10) pills. (Exhibit 5, pp. A45–A46.) For Category II violations, the Board recommends discipline ranging from a minimum of three years' probation or five years' probation in cases involving self-administration or diversion of controlled substances to a maximum of revocation. (*Id.*, p. 45.)

17. Based on the absence of prior license discipline or criminal convictions over respondent's 13 years as a licensed pharmacist, respondent's insight into his misconduct, respondent's expression of remorse, and his cooperation with the Board, as well as the unique circumstances surrounding the theft incidents, public protection does not require revocation of respondent's pharmacist license. Placing respondent's

pharmacist license on five years' probation with appropriate and tailored terms and conditions, including psychotherapy, is consistent with the Board's Disciplinary Guidelines and sufficient for public protection.

18. However, while respondent testified he is not a drug addict, and such testimony is supported by his lack of prior license discipline or criminal history, respondent offered no third-party testimony, medical testing results, or letters confirming he does not abuse drugs. Thus, to address any lingering substance abuse concerns, respondent's license shall be suspended until respondent undergoes and completes a clinical diagnostic evaluation regarding respondent's judgment and ability to function independently and safely as a pharmacist. If the evaluator determines respondent has a substance abuse disorder that may currently affect respondent's safe pharmacy practice, appropriate substance abuse-related conditions will be added to respondent's probationary terms.

Costs of Investigation and Enforcement

19. Under Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought according to statutory provisions like section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

20. As set forth in Factual Findings 22 and 23, complainant sought enforcement costs of \$4,935 and investigation costs of \$5,742.75. The request for investigation costs does not comply with CCR, title 1, section 1042, and therefore the requested investigation costs may not be awarded. Consequently, only the enforcement costs of \$4,935 may be awarded. In light of the *Zuckerman* factors, this sum is reasonable.

ORDER

Pharmacist license number RPH 64451 issued to respondent Michael Anthony Abram is revoked; however, the revocation is stayed and respondent's license is placed on probation for five years upon the following terms and conditions:

1. Suspension Pending Clinical Diagnostic Evaluation

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the board or its designee, respondent shall undergo, at his own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the board or its designee. The approved evaluator shall be provided with a copy of the board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacist with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the board or its designee may by written notice to respondent adopt any such restrictions or

conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board or its designee that practice may resume.

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

Commencing on the effective date of this decision, respondent is suspended from practice and shall not practice as a pharmacist until:

- Respondent has undergone and completed clinical diagnostic evaluation(s);
- The report(s) of the evaluation(s) has/have been received by the board or its designee;
- One or more report(s) has concluded that respondent is safe to return to practice as a pharmacist;
- The board or its designee is satisfied that respondent is safe to return to practice as a pharmacist;

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- Respondent receives written notice from the board or its designee that practice may resume.

For all such evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days.

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

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a 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, including any suspension or deadline stated by this term shall be considered a violation of probation.

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2. 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.

3. 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.

4. 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.

5. 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.

6. Continuing Education

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

7. 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 7470 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 7470, 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 has read the decision in case number 7470 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 7470 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 has read the decision in case number 7470, 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.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacist, or any position for which a pharmacist license is a requirement or criterion for

employment, whether the respondent is an employee, independent contractor, or volunteer.

8. 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.

9. 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.

10. 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 \$4,935. Respondent shall make said payments based on a payment schedule approved by the board.

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. 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.

11.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.

12.Status of License

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

13.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.

14.Practice Requirement - Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 40 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.

15. 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.

16. Completion of Probation

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

17. Psychotherapy

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name and qualifications of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's own expense, a mental health evaluation by a board-appointed or board-approved psychiatrist or psychologist. If the approved evaluator recommends

that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and such other information required by the board or its designee.

If at any time the treating therapist determines that respondent cannot practice safely or independently, the therapist shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or

dispensing of dangerous drugs and/or dangerous devices or controlled substances.
Respondent shall not resume practice until notified by the board.

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a 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.

DATE: 01/19/2024

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, flowing script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 7470

13 **MICHAEL ANTHONY ABRAM**
14 **3240 Beck Rd.**
Lompoc, CA 93436

ACCUSATION

15 **Pharmacist License No. RPH 64451**

16 Respondent.
17

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19
20
21 **PARTIES**

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

25 2. On or about August 23, 2010, the Board of Pharmacy issued Pharmacist License
26 Number RPH 64451 to Michael Anthony Abram (Respondent). The Pharmacist License was in
27 full force and effect at all times relevant to the charges brought herein and will expire on
28 December 31, 2023, unless renewed.

JURISDICTION

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

4. Section 4011 of the Code states: "The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

5. Section 4300, subdivision (a), of the Code states: "Every license issued may be suspended or revoked."

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.

7. Section 4307 of the Code states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a license" as used in this

section and Section 4308, may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

STATUTORY PROVISIONS

8. 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.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. 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.

..

(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.

...

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this chapter
3 or of the applicable federal and state laws and regulations governing pharmacy,
4 including regulations established by the board or by any other state or federal
5 regulatory agency.

6 ...

7 10. Health and Safety Code section 11173, subdivision (a), states: "No person shall
8 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
9 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
10 or subterfuge; or (2) by the concealment of a material fact."

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

15 **DEFINITIONS**

16 12. "Percocet" is a Schedule II controlled substance pursuant to Health and Safety Code
17 section 11055 and a dangerous drug pursuant to Business and Professions Code section 4022.
18 Percocet is a trade name for the narcotic substance Oxycodone combined with the non-narcotic
19 substance Acetaminophen.

20 13. "Dilaudid" is a Schedule II controlled substance pursuant to Health and Safety Code
21 section 11055 and a dangerous drug pursuant to Business and Professions Code section 4022.
22 Dilaudid is a brand name for Hydromorphone.

23 **FACTUAL ALLEGATIONS**

24 14. In July 2022, Respondent was employed as a pharmacist by a Walmart Pharmacy in
25 San Luis Obispo County, California.

26 15. Respondent worked a pharmacist shift at Walmart Pharmacy on July 5, 2022. On that
27 day, Walmart Pharmacy staff discovered that a patient's prescription for Dilaudid, which had
28 been filled and was in the will call bin, was five Dilaudid pills short. Staff were initially unable to
determine the cause of loss.

16. Respondent also worked a pharmacist shift at Walmart Pharmacy on July 25, 2022. On that day, Walmart Pharmacy staff discovered that a different patient's filled prescription for Percocet was five pills short. Staff reviewed video surveillance, which showed Respondent opening a bag containing Percocet pills, removing his right hand from the pill bag with a partially clenched fist, and putting his right hand in his right front pocket.

17. Walmart Pharmacy staff then reviewed video surveillance related to the July 5, 2022 shortage of Dilaudid, and discovered similar conduct by Respondent.

18. Shortly after the July 25, 2022 incident, Respondent was interviewed by Walmart Pharmacy compliance staff, and falsely denied having diverted medications on July 5 and July 25, 2022. However, Respondent later made the following statement to a Board investigator: “I admit that in July 2022, I took ten tablets of prescription strength analgesic medication to help treat an injury from my workplace[.]”

19. Respondent was terminated by Walmart Pharmacy in August 2022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit,
or Corruption)

20. Paragraphs 14 through 18 are incorporated herein by this reference..

21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that on July 5 and July 25, 2022, Respondent diverted controlled substances for his own personal use.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Obtained Controlled Substances by Fraud, Deceit, Misrepresentation,
or Subterfuge)

22. Paragraphs 14 through 18 are incorporated herein by this reference..

23. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in conjunction with Health and Safety Code section 11173, subdivision (a), in that Respondent violated statutes regulating controlled substances when, on July 5 and July 25, 2022,

Respondent obtained controlled substances by fraud, deceit, misrepresentation, or subterfuge.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Unlawful Possession of Controlled Substances)

24. Paragraphs 14 through 18 are incorporated herein by this reference.

25. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in that Respondent violated Code section 4060 when, on July 5 and July 25, 2022, Respondent possessed controlled substances which were not prescribed to him and which he diverted for his own personal use.

OTHER MATTERS

26. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number RPH 64451 issued to Michael Anthony Abram, he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 64451 is placed on probation or until Pharmacist License Number RPH 64451 is reinstated if it is revoked.

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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 64451, issued to Michael Anthony Abram;

2. Prohibiting Michael Anthony Abram from serving as a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of a licensee for five years if Pharmacist License Number RPH 64451 is placed on probation or until Pharmacist License Number RPH 64451 is reinstated if revoked;

3. Ordering Michael Anthony Abram 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,

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

DATED: 4/26/2023

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2023.04.26 20:53:23 -07'00'

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

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