1 2	EDMUND G. BROWN JR., Attorney General of the State of California FRANK H. PACOE
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663
4	Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
5	Telephone: (415) 703-1299 Facsimile: (415) 703-5480
6 7	Attorneys for Complainant
ŕ	BEFORE THE
8 9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10 11	In the Matter of the Accusation Against: Case No. 3243
11	BRIAN D. LEE 88 Townsend Street # 323 A C C U S A T I O N
13	San Francisco, CA 94107
14	Pharmacist License No. RPH 51443
15	Respondent.
16	
17	Complainant alleges:
. 18	PARTIES
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about March 27, 2000, the Board of Pharmacy issued Pharmacist
22	License Number RPH 51443 to Brian D. Lee (Respondent). The Pharmacist License was in full
23	force and effect at all times relevant to the charges brought herein and will expire on October 31,
24	2009, unless renewed.
25	JURISDICTION
26	3. This Accusation is brought before the Board of Pharmacy (Board),
27	Department of Consumer Affairs, under the authority of the following laws. All section
28	references are to the Business and Professions Code (Code) unless otherwise indicated.
	1

4. Section 4011 of the Code provides that the Board shall administer and
 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
 Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the
Board may be suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, 7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to 8 proceed with a disciplinary action during the period within which the license may be renewed, 9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or 10 11 reinstated and shall be canceled by operation of law at the end of the three-year period. Section 12 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion -13 14 may not be reissued but will instead require a new application to seek reissuance.

- 15

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall
take action against any holder of a license who is guilty of "unprofessional conduct," defined to
include, but not be limited to, any of the following:

(h) The administering to oneself, of any controlled substance, or the use of any
dangerous drug or alcoholic beverage to the extent or in a manner as to be dangerous or injurious
to oneself, to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

(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.

1	8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any
2	dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
3	9. Section 4060 of the Code provides, in pertinent part, that no person shall
4	possess any controlled substance, except that furnished upon a valid prescription/drug order.
5	10. Health and Safety Code section 11170 provides that no person shall
6	prescribe, administer, or furnish a controlled substance for himself or herself.
7	11. Health and Safety Code section 11357, in pertinent part, makes it unlawful
8	for any person to possess marijuana or concentrated cannabis.
9	12. Section 125.3 of the Code provides, in pertinent part, that the Board may
10	request the administrative law judge to direct a licentiate found to have committed a violation of
11	the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
12	CONTROLLED SUBSTANCES / DANGEROUS DRUGS
13	13. Section 4021 of the Code provides that a "controlled substance" is any
14	substance listed in Division 10, Chapter 2 (Section 11053 et seq.) of the Health and Safety Code.
15	14. Section 4022 of the Code states, in pertinent part:
16	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for
17	self-use, except veterinary drugs that are labeled as such, and includes the following:
18	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing
19	without prescription,' 'Rx only,' or words of similar import.
20	· · · · · · · · · · · · · · · · · · ·
21	"(c) Any other drug or device that by federal or state law can be lawfully
22	dispensed only on prescription or furnished pursuant to Section 4006."
23	15. Marijuana is a Schedule I controlled substance as designated by Health
24	and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and
25	Professions Code section 4022. It is a hallucinogenic drug.
26	FACTUAL BACKGROUND
27	16. Before and until January 22, 2008, Respondent was the Pharmacist in
28	Charge at a Walgreens Pharmacy (PHY 44585) in Mill Valley, CA.
	3

:

`	
,	
1	17. On several occasions in or about December 2007 and January 2008,
2	Respondent ingested (smoked) marijuana. On or about January 22, 2008, he tested positive for
3	marijuana in a drug screening by his employer, Walgreens.
4	FIRST CAUSE FOR DISCIPLINE
5	(Self-Administration of Controlled Substance)
6	18. Respondent is subject to discipline under section 4301(h) of the Code, in
7	that Respondent, as described in paragraph 17, administered one or more controlled substances to
8	himself, including marijuana.
9	SECOND CAUSE FOR DISCIPLINE
10	(Furnishing of Controlled Substance)
11	19. Respondent is subject to discipline under section 4301(j) and/or (o) and/or
12	section 4059 of the Code in that Respondent, as described in paragraph 17 above, furnished to
13	himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
14	abetted furnishing of, a controlled substance.
15	THIRD CAUSE FOR DISCIPLINE
16	(Possession of Controlled Substance)
17	20. Respondent is subject to discipline under section 4301(j) and/or (o) and/or
18	section 4060 of the Code, and/or Health and Safety Code section 11357, in that Respondent, as
19	described in paragraph 17 above, possessed, conspired to possess, and/or assisted in or abetted
20	possession of marijuana or concentrated cannabis, a controlled substance.
21	FOURTH CAUSE FOR DISCIPLINE
22	(Self-Administration/Use of Controlled Substance)
23	21. Respondent is subject to discipline under section 4301(j) and/or (o) of the
24	Code, and/or Health and Safety Code section 11170, in that Respondent, as described in
25	paragraph 17 above, self-administered/used, conspired to self-administer/use, and/or assisted
26	in/abetted self-administration/use, of a controlled substance, without prescription.
27	///
28	
	4

1	SEVENTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct)
3	22. Respondent is subject to discipline under section 4301 of the Code in that
4	Respondent, as described in paragraphs 17 to 21 above, engaged in unprofessional conduct.
5	PRAYER
6	WHEREFORE, Complainant requests that a hearing be held on the matters herein
7	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
8	A. Revoking or suspending Pharmacist License Number RPH 51443, issued
9	to Brian D. Lee (Respondent);
10	B. Ordering Respondent to pay the Board reasonable costs of investigation
11	and enforcement of this case, pursuant to Business and Professions Code section 125.3;
12	C. Taking such other and further action as is deemed necessary and proper.
13	
14	DATED: 6/5/09
15	
16	Line Herdel
17	VIRGINIA HEROLD
18	Executive Officer Board of Pharmacy
19	Department of Consumer Affairs State of California
20	Complainant
21	
22	
23	
24	l L
25	
26	
27	SF2008402830
28	40319792.wpd
	5