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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against,
14 **MICHAEL DOUGLAS MOON**
520 E. El Nido Ct.
15 Santa Maria, CA 93455
16 Pharmacist License No. RPH 42325
17 Respondent.
18

Case No. 3262
ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
24 2. On or about March 3, 1989, the Board of Pharmacy (Board) issued Pharmacist
25 License No. RPH 42325 to Michael Douglas Moon (Respondent). On May 1, 2008, Respondent
26 surrendered his Pharmacist License No. RPH 42325. On December 31, 2008, Respondent
27 renewed his Pharmacist License No. RPH 42325, and the Pharmacist License will expire on
28 December 31, 2010, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
3 the authority of the following laws. All section references are to the Business and Professions
4 Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the
6 suspension/expiration/surrender/cancellation of a license shall not deprive the
7 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated.

9 5. Section 4022 provides that a "Dangerous drug" or "dangerous device" is any drug or
10 device unsafe for self-use in humans or animals, and by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to other restriction.

12 6. Section 4059, subdivision (a), states:

13 " A person may not furnish any dangerous drug, except upon the prescription of a
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
15 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
16 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
17 3640.7."

18 7. Section 4060 states:

19 "No person shall possess any controlled substance, except that furnished to a person upon
20 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
21 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
22 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
23 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
24 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
26 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
27 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
28 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly

1 labeled with the name and address of the supplier or producer.

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

5 8. Section 4077 states, in pertinent part, that except as provided in subdivisions (b) and
6 (c) of this section, no person shall dispense any dangerous drug upon prescription except in a
7 container correctly labeled with the information required by Section 4076.

8 9. Section 4300 states that "[e]very license issued may be suspended or revoked."

9 10. Section 4301 states, in pertinent part:

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

13

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

17

18 "(h) The administering to oneself, of any controlled substance, or the use of any
19 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
20 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
21 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
22 the public the practice authorized by the license.

23

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

26

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

16 11. Section 4327 states:

17 "Any person who, while on duty, sells, dispenses or compounds any drug while under the
18 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

19 12. Health and Safety Code section 11170 states:

20 "No person shall prescribe, administer, or furnish a controlled substance for himself.

21 **REGULATORY PROVISIONS**

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

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

1 (Super. Ct. Santa Barbara County, 1008, Case No. 1280546). The Court sentenced Respondent to
 2 120 days in jail, ordered payment of \$13,940.88 restitution to Walgreens, and ordered surrender
 3 of his Pharmacist License to the Court.

4 b. The circumstances surrounding the conviction are that on or between July 1, 2005
 5 and January 3, 2008, Respondent admittedly took controlled substances, dangerous drugs and
 6 over-the-counter drugs from his employer Walgreens Pharmacy. On January 3, 2008,
 7 Respondent consumed two tablets of Hydrocodone/Acetaminophen 10/325 (Norco) during his
 8 work shift, and from his socks and other clothing, Respondent retrieved drugs wrapped in tissue
 9 paper in amounts as follows: 19 Tylenol with Codeine #3; 22 Norco; and 8 Cephalexin 500 mg.

10 c. On January 3, 2008, Respondent admitted to stealing over the prior two and one half
 11 (2 1/2) years as follows:

<u>Drug</u>	<u>Quantity</u>	<u>Controlled Substance Schedule¹</u>	<u>Dangerous Drug</u>	<u>Over- the- Counter</u>
Hydrocodone 10/325	8,320	III	Yes	
Hydrocodone 10/500	1,000	III		
Hydrocodone 10/660	300	III		
Hydrocodone 10/650	300	III		
Phentermine 37 1/2mg	200	IV		
Claritin 10mg	300			Yes
Zantac 150 mg	1,000		Yes	
Hydrocortisone Cream	6x30gm		Yes	
Acetaminophen W Codeine #3	1,000	III		
Acetaminophen W Codeine #4	800	III		
Keflex 500 mg	500		Yes	
Xanax 1mg	500	IV		
Prazosin 5mg	100		Yes	
Prilosec 20mg	500			Yes
Azithromycin 250mg	4x30ml		Yes	
Tobrex Ophthalmic	6x10ml		Yes	
23 Gauge 1" Needle/Syringe	6x3ml		Yes	

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

25 19. Respondent is subject to disciplinary action under section 4301, subdivision (f), in

26 _____
 27 ¹ Schedule III, Health and Safety Code section 11056

Schedule IV, Health and Safety Code section 11057

28 All Schedule controlled substances are dangerous drugs pursuant to Business and Professions
 code section 4022.

1 that on or between July 1, 2005 and January 3, 2008, Respondent committed acts involving moral
2 turpitude, dishonesty, fraud, deceit, or corruption, when while working as a staff pharmacist at
3 Walgreens Pharmacy he stole controlled substances, dangerous drugs and over the counter drugs.
4 Complainant refers to and by this reference incorporates the allegations set forth above in
5 paragraph 18, subdivisions (a), (b) and (c), inclusive, as though set forth fully.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Possession of Controlled Substances and Dangerous Drugs Without Valid Prescriptions)**

8 20. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
9 conjunction with sections 4059, subdivision (a), 4060, and 4077, in that on or between July 1,
10 2005 and January 3, 2008, Respondent was in possession of controlled substances and dangerous
11 drug without valid prescriptions, and in non-conforming prescription containers. Complainant
12 refers to and by this reference incorporates the allegations set forth above in paragraphs 18 and
13 19, inclusive, as though set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Self Administration of Illegal Drugs)**

16 21. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
17 conjunction with Health and Safety Code section 11170, in that on or between July 1, 2005, and
18 January 3, 2008, Respondent administered to himself controlled substances without valid
19 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
20 above in paragraphs 18 - 20, inclusive, as though set forth fully.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Dispensing While Under the Influence of Illegal Drugs)**

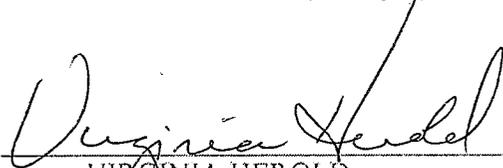
23 22. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
24 conjunction with section 4327, in that on or between July 1, 2005, and January 3, 2008, while on
25 duty as a staff pharmacist at Walgreens, Respondent dispensed medications when he was under
26 the influence of illegally ingested controlled substances and dangerous drugs. Complainant refers
27 to and by this reference incorporates the allegations set forth above in paragraphs 18-21, inclusive,
28 as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 42325, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/26/09



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

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