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

In the Matter of the Accusation Against: **MARVIN GEORGE GIBSON** 116 South Creek Circle Folsom, CA 95630 Respondent.	Case No. 3291 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about May 23, 1972, the Board of Pharmacy issued Original Pharmacist License Number RPH 27732 to Marvin George Gibson (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

JURISDICTION

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

4. Section 4300 of the Code states, in pertinent part:

(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.

5. 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 procured by fraud or misrepresentation or 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.

. . .

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or 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, or any other state, or of the United States regulating controlled substances and dangerous drugs.

. . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for

appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(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.

6. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

7. Section 4060 of the Code states, in pertinent part:

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.

8. Section 4327 of the Code states:

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

9. Health and Safety Code section 11350, subdivision (a) states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),

paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

10. Health and Safety Code section 11170 states no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code section 11173, subdivision (a) states, in pertinent part, that no person "shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances . . .by fraud, deceit, misrepresentation , or subterfuge . . .. "

12. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

13. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

DRUGS

14. Hydrocodone is an opiate and a Schedule III controlled substance as designated by Health & Safety Code section 11056, subdivision (e)(4).

OTHER MATTERS

15. Federal law prohibits a pharmacy from employing any person who has been convicted of a felony offense relating to controlled substances. (21 C.F.R. § 1301.76)

FIRST CAUSE FOR DISCIPLINE

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

16. Respondent is subject to disciplinary action under section 4301, subdivision (f) in that he committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The circumstances are as follows:

17. On or about the time period from October 2007 to November 30, 2007, the exact dates which are unknown, Respondent stole approximately 480 tablets of a hydrocodone-containing Schedule III controlled substance medication from Sacramento Primary Care Pharmacy while on duty as a registered pharmacist, in violation of law. Respondent admitted verbally and in a signed declaration that he stole the hydrocodone-containing medication from Sacramento County Primary Care Pharmacy on multiple occasions.

SECOND CAUSE FOR DISCIPLINE

(Violation of State/Federal Statute Regulating Controlled Substances)

18. Respondent is subject to disciplinary action under section 4301, subdivision (j) in that he violated the statutes of this state regulating controlled substances and dangerous drugs. The circumstances are as follows:

19. Pursuant to Respondent's admissions, during September of 2007, he was illegally in possession of 400 tablets of hydrocodone-containing tablets which he took from his deceased father's medication supply and used for self-administration. Additionally, from October 2007 to November 30, 2007, all the exact dates which were unknown, and also per Respondent's own admissions, it was estimated that he stole approximately 480 tablets of hydrocodone-containing schedule III controlled substance medication from Sacramento Primary Care Pharmacy and administered the stolen tablets to himself. Accordingly, Respondent was in violation of Health and Safety Code sections 11350(a), 11170, and 11173(a) as well as Business and Professions Code section 4060.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of a Controlled Substance)

20. Respondent is subject to disciplinary action under section 4301, subdivision (h) in that he administered to himself a controlled substance. The circumstances are as follows:

21. Between approximately September of 2007 and November 30, 2007, all the exact dates which were unknown, and per Respondent's own admission, he illegally self-administered hydrocodone-containing schedule III controlled substances on multiple occasions.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Laws Governing Pharmacy)

22. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that he violated or attempted to violate directly or indirectly, a provision or term of the Pharmacy Law (Business and Professions Code section 4000 et seq.) or of the applicable federal and state laws governing pharmacy. The circumstances are as set forth above in paragraphs 15 through 20 and as follows:

23. Between approximately September of 2007 and November 30, 2007, all the exact dates which were unknown, Respondent self-administered hydrocodone-containing schedule III controlled substances. As a result, he was under the influence of hydrocodone numerous times, including when he was involved with the preparation, compounding, dispensing, and sale of prescriptions, as well as providing patient care as a licensed pharmacist while under the influence of that hydrocodone, which is a dangerous drug as defined in Code section 4022, in violation of Code section 4327.

FIFTH CAUSE FOR DISCIPLINE

(Criminal Conviction)

24. Respondent is subject to disciplinary action under section 4301, subdivision (l) in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacist. The circumstances are as follows:

25. On or about August 21, 2009, Respondent was convicted on his plea of no lo contendere of one felony count of violating Health and Safety Code section 11350 (possession of a controlled substance) in *People v. Marvin Gibson* (Super. Ct. Sacramento County, 2009, No. 09F02057). The circumstances of the crime are set forth in paragraphs 17-23 above.

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 Original Pharmacist License Number RPH 27732, issued to Marvin George Gibson.

2. Ordering Marvin George Gibson 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;

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

DATED: 10/19/09

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

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Gibson - First Amended Accusation.wpd