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7	BEFORE THE
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
9	STATE OF CALIFORNIA
10	In the Matter of the Accusation Against: Case No. 3344
11	In the Matter of the Medianism Lagrands.
12	ELLEN M. OERTLI 1255 Detroit Avenue #7 ACCUSATION
13	Concord, California 94520
14	Pharmacist License No. RPH 49590
15	Respondent.
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17	Complainant alleges:
	PARTIES
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20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about August 26, 1997, the Board of Pharmacy issued Pharmacist
. 22	License Number RPH 49590 to Ellen M. Oertli (Respondent). The Pharmacist License was in
23	full force and effect at all times relevant to the charges brought herein and will expire on
24	February 28, 2011, 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.

- 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. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation 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. 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 reinstated and shall be canceled by operation of law at the end of the three-year period. Section 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 may not be reissued but will instead require a new application to seek reissuance.

STATUTORY 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:
- (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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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- (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 . . .
- 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 10. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell, dispense or compound any drug while under the influence of a dangerous drug or alcohol.
- 11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- Health and Safety Code section 11173, subdivision (a), provides 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, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
- 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.
- 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

17. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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.

"(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."

18. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are narcotic drugs.

FACTUAL BACKGROUND

- 19. Between on or around March 30, 2007 and on or around May 5, 2008, Respondent was employed as a floating staff/relief pharmacist at various Walmart Corporation stores, including those in Rohnert Park, CA (PHY 37618) and Richmond, CA (PHY 48562). In that/those position(s), Respondent had access to controlled substances and dangerous drugs.
- 20. On repeated occasions in and/or between in or around January 2008 and in or around May 2008, the exact dates of which are unknown, Respondent took advantage of that access to divert/steal controlled substances and dangerous drugs from Walmart stock. The exact types and quantities of drugs taken by Respondent are unknown, but by her own admission they included at least approximately 1,200 tablets of Vicodin and/or its generic and/or other similar drugs containing the controlled substance hydrocodone, a narcotic analgesic.

21. Respondent further admitted to being addicted to **hydrocodone**, and to consuming/self-administering **hydrocodone**-containing drugs (like **Vicodin** and/or its generic) while on duty as a pharmacist on multiple occasions in and/or between January 2008 and May 2008. Respondent admitted to being under the influence while on duty, and one or more times was observed by customer(s) and/or co-worker(s) to be seemingly impaired in her function(s).

FIRST CAUSE FOR DISCIPLINE

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

22. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 19-21 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

23. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 19-21 above, repeatedly furnished and/or administered to herself, without valid prescription(s), controlled substances and/or dangerous drugs, and/or attempted, conspired, and/or assisted in or abetted such conduct.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, section 4060 of the Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 19-21 above, Respondent possessed controlled substances and dangerous drugs, without valid prescription(s) authorizing such possession, and/or attempted, conspired, and/or assisted in or abetted such conduct.

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FOURTH CAUSE FOR DISCIPLINE

(Selling, Dispensing, or Compounding While Under the Influence)

25. Respondent is subject to disciplinary action under section 4301(j) and/or (o) of the Code, and section 4327 of the Code, in that as described in paragraphs 19-21 above, Respondent sold, dispensed or compounded one or more drugs while under the influence of a dangerous drug, and/or attempted, conspired, and/or assisted in or abetted such conduct.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 19-21 above, obtained controlled substances and dangerous drugs by fraud, deceit, misrepresentation, subterfuge, or concealment of material fact, and/or attempted, conspired, and/or assisted in or abetted such conduct.

SIXTH CAUSE FOR DISCIPLINE

(Use of Controlled Substance)

27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that, as described in paragraphs 19-21 above, Respondent used or was under the influence of certain identified controlled substances, not administered by or under the direction of an authorized licensee, and/or attempted, conspired, and/or assisted in or abetted such conduct.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 19-27 above, engaged in unprofessional conduct.

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:

A. Revoking or suspending Pharmacist License Number RPH 49590, issued to Ellen M. Oertli (Respondent);

B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

C. Taking such other and further action as is deemed necessary and proper.

DATED: 6/5/09

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VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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