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

12 In the Matter of the Accusation Against:

Case No. 3349

13 **SHELDON DALE BORSON, JR.**
74821 Borrego Drive
14 Palm Desert, CA 92260

A C C U S A T I O N

15 **Pharmacist License No. RPH 45970**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 9, 1993, the Board of Pharmacy issued Pharmacist License
22 Number RPH 45970 to Sheldon Dale Borson, Jr. (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on February
24 28, 2011, unless renewed.

25 **JURISDICTION**

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

1 7. Section 4022 of the Code states

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

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

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

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

12 8. Section 4059, subsection (a), of the Code states: "A person may not furnish any
13 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

17 9. Section 4060 of the Code states:

18 No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
21 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
22 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
23 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
24 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
26 shall not apply to the possession of any controlled substance by a manufacturer,
27 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
28 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.

10 10. Section 11153 of the Health and Safety Code states:

11 (a) A prescription for a controlled substance shall only be issued for a
12 legitimate medical purpose by an individual practitioner acting in the usual course of
13 his or her professional practice. The responsibility for the proper prescribing and
14 dispensing of controlled substances is upon the prescribing practitioner, but a

1 corresponding responsibility rests with the pharmacist who fills the prescription.
2 Except as authorized by this division, the following are not legal prescriptions: (1) an
3 order purporting to be a prescription which is issued not in the usual course of
4 professional treatment or in legitimate and authorized research; or (2) an order for an
5 addict or habitual user of controlled substances, which is issued not in the course of
6 professional treatment or as part of an authorized narcotic treatment program, for the
7 purpose of providing the user with controlled substances, sufficient to keep him or her
8 comfortable by maintaining customary use.

9
10
11 11. Section 11158, subdivision (a), of the Health and Safety Code states:

12 (a) Except as provided in Section 11159 or in subdivision (b) of this
13 section, no controlled substance classified in Schedule II shall be dispensed without a
14 prescription meeting the requirements of this chapter. Except as provided in Section
15 11159 or when dispensed directly to an ultimate user by a practitioner, other than a
16 pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V
17 may be dispensed without a prescription meeting the requirements of this chapter.

18 (b) A practitioner specified in Section 11150 may dispense directly to an
19 ultimate user a controlled substance classified in Schedule II in an amount not to
20 exceed a 72-hour supply for the patient in accordance with directions for use given by
21 the dispensing practitioner only where the patient is not expected to require any
22 additional amount of the controlled substance beyond the 72 hours. Practitioners
23 dispensing drugs pursuant to this subdivision shall meet the requirements of
24 subdivision (f) of Section 11164.

25
26 12. Section 11170 of the Health and Safety Code states: "No person shall prescribe,
27 administer, or furnish a controlled substance for himself."

28 13. Section 11175 of the Health and Safety Code states: "No person shall obtain or
possess a prescription that does not comply with this division, nor shall any person obtain a
controlled substance by means of a prescription which does not comply with this division or
possess a controlled substance obtained by such a prescription.

14. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

.....

(3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1714 states:

1 (c) The pharmacy and fixtures and equipment shall be maintained in a clean
2 and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents
3 and insects, and properly lighted. The pharmacy shall be equipped with a sink with
4 hot and cold running water for pharmaceutical purposes.

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

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

13 **COST RECOVERY**

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

18 **FACTS –2007 INCIDENTS**

19 18. On or about May 27, 2007, the Board received two Drug Enforcement Administration
20 (DEA) DEA-106 Loss Reports from a Rancho Mirage Sav-On Pharmacy (located inside an
21 Albertson's grocery store) alleging employee pilferage resulting in the significant loss of 137
22 different dangerous drugs and controlled substances with an estimated value of over \$150,000.
23 An Albertson's Loss Prevention Manager contacted the pharmacy and was told that Respondent,
24 who was the pharmacist-in-charge (PIC) at the time, had been behaving suspiciously: he was
25 gone from the pharmacy numerous times during working hours without being punched-out on the
26 time clock, he spent a lot of time talking on his cell phone outside of the store, he removed items
27 from the pharmacy, and he met various people in their cars in the store's parking lot.

28 19. Once the pilferage was discovered, covert cameras were installed in the pharmacy
and live surveillance was conducted as follows:

a. On March 2, 2007, Respondent was gone from the pharmacy for over 67
minutes while not punched out.

1 b. On March 15, 2007, Respondent was observed handing something from a bag
2 to an unknown female who then put the item in her purse. Respondent was observed leaving the
3 pharmacy with a box and a bag and placing them in his vehicle. Respondent was gone from the
4 pharmacy for over 85 minutes without punching out.

5 c. On March 20, 2007, Respondent was gone from the pharmacy for over 105
6 minutes without punching out.

7 d. On March 22, 2007, Respondent left the property in a grey Hummer with a
8 blonde female and was gone for over 70 minutes without punching out.

9 e. On March 23, 2007, Respondent was gone from the pharmacy for over 90
10 minutes without punching out. Additionally, a female with reddish hair approached Respondent
11 in the pharmacy, hugged him and handed him a gift bag. Respondent handed the female what
12 appeared to be medications.

13 f. On March 28, 2007, Respondent exited the pharmacy/store carrying a box. The
14 store director inquired about the contents of the box. Respondent appeared startled and stated that
15 he was delivering empty pill bottles to another pharmacy. After placing the box in his vehicle, a
16 white car pulled alongside. Respondent removed something from his vehicle and gave it to the
17 driver of the white car. Later in the day, Respondent was seen outside the store talking on his cell
18 phone when a black SUV pulled up. Respondent got into the SUV and spent approximately 20
19 minutes in the SUV while it was parked.

20 g. On March 30, 2007, Respondent met with an unknown male in the parking lot.
21 Later in the day, a black SUV circled the parking lot then parked next to Respondent's vehicle.
22 Respondent was observed getting into the SUV and talking to the driver.

23 h. On April 2, 2007, Respondent was observed exiting the store carrying two
24 small white envelopes and getting into a grey Hummer being driven by a blonde female (later
25 identified as Respondent's fiancée). Respondent talked on his cell phone. An unknown male
26 walked across the parking lot and got into the back seat of the Hummer. All three talked for a
27 while then exited the vehicle. Respondent handed a small white envelope to the female and
28 hugged her. Respondent handed the unknown male a small white envelope, which the male

1 immediately cupped in his hand. The male gave Respondent a folded piece of white paper and
2 walked out of the parking lot. Later in the day, Respondent was observed exiting the pharmacy
3 carrying a white prescription bag containing items that were not rung up. Respondent got into his
4 vehicle and left the property for over 90 minutes without being punched out.

5 i. On April 4, 2007, Respondent was gone from the pharmacy for over 90 minutes
6 without being punched out.

7 j. On April 10, 2007, Respondent exited the pharmacy with a white prescription
8 bag containing items that were not paid for and got into a white car. Approximately 20 minutes
9 later, Respondent returned to the pharmacy without the white bag.

10 k. On April 12, 2007, Respondent was gone from the pharmacy for over 90
11 minutes without being punched out.

12 l. On April 16, 2007, Respondent left the pharmacy holding a brown bag and met
13 with a man sitting inside a black SUV.

14 m. On April 17, 2007, Respondent was gone from the pharmacy for over 60
15 minutes without being punched out. He was observed leaving the store with a white prescription
16 bag without paying for the items in it, and returned without the bag.

17 n. On April 23, 2007, Respondent was observed removing two pills from a pill
18 bottle, consuming the pills with water, and then placing the bottle on the front counter. Later,
19 Respondent was observed obtaining a pill bottle from behind the computer monitor, pouring some
20 pills into his right hand, and then returning the pill bottle to its original location. Respondent then
21 concealed the pills in his pocket and left the pharmacy without paying for them.

22 o. On April 25, 2007, Respondent was videotaped coming back to the pharmacy
23 after he had left for the day, taking a pill bottle and removing tablets from it, hiding the pill bottle
24 in a bottom drawer, and putting the tablets in his pocket. Respondent then left the pharmacy
25 without paying for the pills.

26 p. On April 26, 2007, Respondent was videotaped removing the pill bottle from
27 the bottom drawer where he had concealed it the day before, taking the bottle to the pill counting
28 machine and pouring the contents into the machine. Respondent then put the tablets back into the

1 pill bottle, made an adjustment in the pharmacy computer, and placed the pill bottle back on the
2 shelf.

3 20. On May 1, 2007, Respondent was interviewed by Albertson's/Sav-On loss prevention
4 officers. Respondent admitted in a written statement that he took medications for himself without
5 a prescription and without paying for them. Respondent stated the medication he was observed
6 consuming on April 23, 2007, was an anti-inflammatory. Respondent also admitted that he
7 provided his then-fiancée with approximately 20 tablets of Subutex (without a prescription and
8 without her paying for them) because she had an addiction to Vicodin and was seeing a doctor.
9 Respondent claimed his unaccounted time away from the store was the result of running errands.
10 Respondent had no explanation for the loss of 137 different dangerous drugs and controlled
11 substances with an estimated value of over \$150,000. Respondent's employment with Sav-On
12 was terminated on May 9, 2007.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Committing Acts Involving**
15 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

16 21. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
17 Code, and section 11173, subdivision (a) of the Health & Safety Code, in that from March 2,
18 2007, to April 26, 2007, Respondent was observed, and he admitted to, diverting controlled
19 substances and dangerous drugs from his employer using fraud, deceit, and dishonesty, as
20 detailed in paragraphs 18-20, above. Such conduct is substantially related to the qualifications,
21 duties, and functions of a pharmacist.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Furnishing Prescription Medication Without Valid Prescription)**

24 22. Respondent is subject to disciplinary action under sections 4059, subdivision (a),
25 and 4301, subdivisions (j) and (o) of the Code in that Respondent provided prescription
26 medications for the use of another without a prescription, as was captured on videotapes and to
27 which he admitted in a written statement dated May 1, 2007, as detailed in paragraphs 18-20,
28 above. As such, Respondent's providing medications that were not prescribed by a medical

1 doctor to another person was dangerous and injurious to the public.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct – Furnishing Controlled Substance Without Valid Prescription)**

4 23. Respondent is subject to disciplinary action under sections 4059, subdivision (a), and
5 section 4301, subdivision (h) of the Code, and section 11158, subdivision (a) of the Health and
6 Safety Code, in that from March 2, 2007, to April 26, 2007, Respondent knowingly provided
7 controlled substances to his fiancée without valid prescriptions therefor, as detailed in paragraphs
8 18-20, above. Such conduct is substantially related to the qualifications, duties, and functions of
9 a pharmacist.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Violating Federal & State Pharmacy Laws & Regulations)**

12 24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
13 Code in that from March 2, 2007, to April 26, 2007, Respondent's diversion of controlled
14 substances violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy
15 Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California
16 Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in
17 paragraphs 18-20, above.

18 **FACTS -2007 THROUGH 2008 INCIDENTS**

19 25. On September 2, 2008, the Board received a complaint from Pharmacy Technician
20 A.B. alleging that Respondent, who was then PIC of Costco Pharmacy #441 (Costco), located at
21 72-800 Dinah Shore Drive, Palm Desert, CA 92211, was filling prescriptions for himself for
22 Provigil, written by J.R., M.D., a physician with a retired DEA number, and in some cases failed
23 to contact the doctor who had written the prescription.

24 26. Review of Respondent's patient profile at Costco provided by A.B. revealed that
25 between September 10, 2007, and August 7, 2008, Respondent filled twelve prescriptions for
26 Provigil 200 mg, allegedly from Doctor R., containing 360 doses of Provigil in that amount.
27 Review of Respondent's patient profile obtained by the Board's Inspector from Costco on
28 November 6, 2008, revealed that between September 3, 2008, and October 31, 2008, Respondent

1 obtained three additional prescriptions for Provigil 200 mg, allegedly from Dr. R., containing 90
2 does of Provigil in that amount. While at Costco on November 6, 2008, the Inspector also noted
3 that the pharmacy shelves were dusty and the pharmacy sink did not have hot water available. He
4 also interviewed Respondent, who informed him that Dr. R. was retired, a family friend, and had
5 approved all the Provogil prescriptions for him.

6 27. On December 3, 2008, Dr. R. faxed the Inspector the following statement:

7 Sheldon Borson has been a patient of mine for many years. Recently he
8 has been under a lot of stress according to some of the stories he has told me. I am
9 certain I did prescribe Provigil 200 mg with 3 refills on Sept. 7, 2007. I may have
10 later refilled his Rx on Jan. 24, 2008 & Feb. 22, 2008. Under normal circumstances I
11 would not prescribe just one refill for a medication that was going to be taken for a
12 prolonged time. I would write for 3 refills then then [sic] the person should be
13 evaluated by his attending [illegible -physician?]. Although I may have prescribed
14 Provigil 200 mg on March 20, 2008 & April 17, 2008, I can't actually positively say
15 that I did. Call me tonite if you want further clarification or [illegible].

16 28. On April 1, 2009, the Inspector returned to Costco. While there, she noted that the
17 pharmacy shelves remained thick with dust. Respondent advised the Inspector that he had
18 worked at Costco since June 2007, and became PIC there on December 18, 2007. When asked
19 about the September 10, 2007 prescription, Respondent confirmed that he had received,
20 transcribed, and filled it for himself. Respondent stated he did not violate Costco pharmacy
21 policy in doing so, and claimed he was unaware of the provisions of Health & Safety Code
22 section 11170 prohibiting this practice. Respondent also advised the Inspector that Dr. R. had
23 died sometime in February 2009.

24 29. The Inspector subsequently determined from the Riverside County District Office of
25 the DEA that the last renewal date for Dr. R.'s DEA Registration was April 9, 1999, and it
26 expired on April 30, 2002. The DEA had mailed Dr. R. a delinquency form on July 12, 2002, but
27 retired his DEA Registration on December 14, 2002, after receiving no response to its July 12,
28 2002 mailing. The Investigator later determined that Dr. R. died on February 20, 2009, though
when interviewed on May 1, 2009, Respondent claimed that he did not learn of his death until
"mid-March" 2009, and that his refilling Dr. R.'s prescriptions after his death was authorized as
"a valid refill."

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Self-Administration of**
3 **Illegally Obtained Controlled Substances and/or Dangerous Drugs)**

4 34. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
5 Code, and section 11170 of the Health and Safety Code, in that Respondent furnished dangerous
6 drugs and/or controlled substances to himself for his personal use without a valid prescription, as
7 detailed in paragraphs 25-30, above. As such, Respondent's use of medications that were not
8 prescribed by a medical doctor was in a manner dangerous and injurious to himself and to the
9 public because it had the potential to impair his ability to conduct with safety the practice of
10 pharmacy.

11 **EIGHTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Violation of California Statutes Regulating**
13 **Controlled Substances & Dangerous Drugs)**

14 35. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
15 Code in that from March 2, 2007, to April 26, 2007, Respondent knowingly violated Business
16 and Professions Code sections 4022 and 4059 regulating controlled substances and dangerous
17 drugs, as detailed in paragraphs 25-30, above. Such conduct is substantially related to the
18 qualifications, duties, and functions of a pharmacist.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Violating Federal & State Laws**
21 **& Regulations Governing Pharmacy)**

22 36. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
23 Code in that from March 2, 2007, to April 26, 2007, Respondent violated Title 21 U.S.C. section
24 843, subdivision (a)(3); Board of Pharmacy Regulations (California Code of Regulations, Title
25 16, Section 1700, et seq.); and the California Uniform Controlled Substances Act (Health and
26 Safety Code 11000, et seq.), by fraudulently obtaining Provigil, a controlled substance, for his
27 own use, as detailed in paragraphs 25-30, above.
28

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violating State Regulations Governing Pharmacy)**

3 37. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
4 Code in that on November 6, 2008, and April 1, 2009, Respondent violated Board of Pharmacy
5 Regulations (California Code of Regulations, Title 16, Section 1714, subsection (c) by failing to
6 maintain the pharmacy, and its fixtures, of which he was Pharmacist In Charge, in a clean
7 condition, as detailed in paragraphs 25-30, above.

8 **DISCIPLINARY CONSIDERATIONS**

9 38. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges that on or about July 16, 2004, in a prior proceeding by on Citation No. CI
11 2004 27818, the Board found Respondent guilty of furnishing dangerous drugs or devices
12 prohibited without prescription (in violation of Code section 4059, subdivision (a)) in that on or
13 about November 15, 2003, Respondent furnished a controlled substance to a patient without first
14 obtaining a valid prescription by an authorized prescriber. Respondent was fined in the amount
15 of \$500.00, which he paid.

16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacist License Number RPH 45970, issued to Sheldon
20 Dale Borson, Jr.;
- 21 2. Ordering Sheldon Dale Borson, Jr. to pay the Board of Pharmacy the reasonable costs
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code
23 section 125.3; and
- 24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: 11/10/10

26 *Virginia Herold*
27 VIRGINIA HEROLD
28 Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant