

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KRISTI GUDOSKI COOK  
Deputy Attorney General  
4 State Bar No. 185257  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-6343  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 3379

13 **RICHARD D. MONTOYA**  
14 **P.O. Box 130403**  
15 **Big Bear Lake, CA 92315**  
16 **Original Pharmacist License No. RPH 41140**

**A C C U S A T I O N**

Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Virginia K. 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 August 19, 1987, the Board of Pharmacy (Board) issued Original  
22 Pharmacist License Number RPH 41140 to Richard D. Montoya (Respondent). The Pharmacist  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on December 31, 2010, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1  
2       4.     Section 4300, subdivision (a), states: "Every license issued may be suspended or  
3 revoked."

4       5.     Section 4301 states, in pertinent part:

5             "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8       ....

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

12       ....

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

18       ....

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

21       ....

22             "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
24 federal and state laws and regulations governing pharmacy, including regulations established by  
25 the board or by any other state or federal regulatory agency."

26       6.     Section 4060 states, in pertinent part:

27             "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer.”

10 7. Section 4327 states: “Any person who, while on duty, sells, dispenses or compounds  
11 any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty  
12 of a misdemeanor.”

13 8. Health and Safety Code section 11170 states: “No person shall prescribe, administer,  
14 or furnish a controlled substance for himself.”

15 9. Health and Safety Code section 11173, subdivision (a), states: “No person shall  
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
18 or subterfuge; or (2) by the concealment of a material fact.”

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

20 “Except as otherwise provided in this division, every person who possesses (1) any  
21 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
22 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
23 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
24 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
25 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
26 licensed to practice in this state, shall be punished by imprisonment in the state prison.

27 ///

28 ///



1 and administered to himself included Vicodin and Tussionex (hereafter, drugs). Respondent did  
2 not have a valid prescription for these drugs.

3 b. Respondent became physically dependent on these drugs, and worked as a pharmacist  
4 while under the influence of these drugs.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct/Possession of a Controlled Substance Without a Prescription)

7 16. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and  
8 (o), and 4060, in conjunction with Health and Safety Code section 11350, subdivision(a), for  
9 possessing a controlled substance without a prescription. Complainant refers to and incorporates  
10 all the allegations set forth in paragraph 15.a as though set forth fully.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct/Administering Controlled Substances to Oneself)

13 17. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
14 conjunction with Health and Safety Code section 11170, for administering controlled substances  
15 to himself. Complainant refers to and incorporates all the allegations set forth in paragraphs 15.a  
16 and 15.b, inclusive, as though set forth fully.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Under the Influence of a Dangerous Drug While Working as a Pharmacist)

19 18. Respondent is subject to disciplinary action under section sections 4301, subdivisions  
20 (j) and (o), and 4327, for selling, dispensing or compounding a drug while under the influence of  
21 a dangerous drug. Complainant refers to and incorporates all the allegations set forth in  
22 paragraphs 15.a and 15.b, inclusive, as though set forth fully.

23 PRAYER

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

26 1. Revoking or suspending Pharmacist License Number RPH 41140, issued to Richard  
27 D. Montoya;

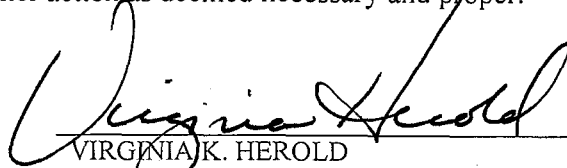
28 ///

1           2.    Ordering Richard D. Montoya to pay the Board the reasonable costs of the  
2 investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3; and

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

5  
6 DATED: \_\_\_\_\_

11/17/09



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

10  
11 LA2009603122  
60436681.doc