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

11 In the Matter of the Accusation Against:

Case No. 3393

12 **CARTER R. STROM**
13 22811 Tea Rose Lane
14 Moreno Valley, CA 92557

ACCUSATION

15 **Pharmacist License No. RPH 36629**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about August 20, 1981, the Board of Pharmacy issued Pharmacist License
23 Number RPH 36629 to Carter R. Strom (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on April 30, 2011,
25 unless renewed.

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JURISDICTION

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

5 4. Section 4300 of the Code states:

6 “(a) Every license issued may be suspended or revoked.

7 “(b) The board shall discipline the holder of any license issued by the board, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 following methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

12 “(3) Suspending his or her right to practice for a period not exceeding one year.

13 “(4) Revoking his or her license.

14 “(5) Taking any other action in relation to disciplining him or her as the board in its
15 discretion may deem proper.

16 “....”

17 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
19 shall have all the powers granted therein. The action shall be final, except that the propriety of
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
21 Civil Procedure.”

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

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STATUTORY PROVISIONS AND REGULATIONS

6. Section 4301 of the Code states:

"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:

"...

"(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.

"...

"(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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 "...."

4 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
5 revoke a license on the ground that the licensee has been convicted of a crime substantially
6 related to the qualifications, functions, or duties of the business or profession for which the
7 license was issued.

8 8. Section 493 of the Code states:

9 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
10 the department pursuant to law to deny an application for a license or to suspend or revoke a
11 license or otherwise take disciplinary action against a person who holds a license, upon the
12 ground that the applicant or the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
15 and the board may inquire into the circumstances surrounding the commission of the crime in
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the
17 qualifications, functions, and duties of the licensee in question.

18 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
19 'registration.'"

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

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

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1 10. Section 482 of the Code states:

2 "Each board under the provisions of this code shall develop criteria to evaluate the
3 rehabilitation of a person when:

4 "(a) Considering the denial of a license by the board under Section 480; or

5 "(b) Considering suspension or revocation of a license under Section 490.

6 "Each board shall take into account all competent evidence of rehabilitation furnished by
7 the applicant or licensee."

8 11. Title 16, Code of Regulations, section 1769, subdivision (b), provides in part:

9 "(b) When considering the suspension or revocation of a facility or a personal license on
10 the ground that the licensee or the registrant has been convicted of a crime, the board, in
11 evaluating the rehabilitation of such person and his present eligibility for a license will consider
12 the following criteria:

13 "(1) Nature and severity of the act(s) or offense(s).

14 "(2) Total criminal record.

15 "(3) The time that has elapsed since commission of the act(s) or offense(s).

16 "(4) Whether the licensee has complied with all terms of parole, probation, restitution or
17 any other sanctions lawfully imposed against the licensee.

18 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

19 **COST RECOVERY**

20 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
21 administrative law judge to direct a licensee found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(August 22, 2008 Conviction of DUI on April 20, 2008)**

26 13. Respondent is subject to disciplinary action under Code sections 490 and 4301 (l) in
27 that Respondent was convicted of a crime substantially related to the qualifications, functions and
28 duties of a pharmacist in *People v. Carter Strom*, San Joaquin County Superior Court, Case No.

1 SP08-21273, on his plea of nolo contendere to violation of Vehicle Code section 23152(b),
2 driving under the influence of alcohol with a blood alcohol content of 0.08% or greater, a
3 misdemeanor.

4 14. The circumstances that led to the conviction are that on April 20, 2008, an officer of
5 the Stockton Police Department received a report of a family disturbance in Respondent's home.
6 As the officer was en route to the call, the officer received information from the dispatcher that
7 Respondent left the house in a maroon Infiniti sedan and was possibly under the influence of
8 alcohol. The officer observed this vehicle parked about 3 feet from the curb approximately a half
9 mile from Respondent's home. The vehicle was not parked completely parallel to the curb. The
10 officer approached the vehicle and observed Respondent behind the steering wheel. The keys
11 were in the ignition and although the gear was in "Park", the car was running. Respondent
12 advised the officer that he was waiting for someone. Respondent's eyes were bloodshot and
13 watery and his speech was slightly slurred. The officer smelled the odor of alcohol from coming
14 from the vehicle. Respondent exited his vehicle at the officer's request. As Respondent did so,
15 the officer observed that Respondent was unsteady and swayed side to side. He was wearing a
16 white undershirt, brown dress slacks with an undone belt and no shoes or socks. Respondent
17 admitted that he was driving, but only to get away from his wife. They had been arguing and he
18 was afraid that she was going to get physical so he felt he had to escape. Respondent stated he
19 drove a short distance away and pulled over once he realized he shouldn't be driving drunk.

20 15. Respondent agreed to perform the preliminary alcohol screening, or PAS, test with a
21 result of 0.181% blood alcohol. Respondent then elected to take breath tests which had the
22 following results: 0.13% blood alcohol and 0.14% blood alcohol.

23 16. Respondent was sentenced to 3 years probation, required to pay \$2,445 in fines and
24 fees, required to serve 2 days in jail and required to complete an alcohol program.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of Alcoholic Beverages to**
3 **the Extent to be Dangerous to the Public on July 16, 2008)**

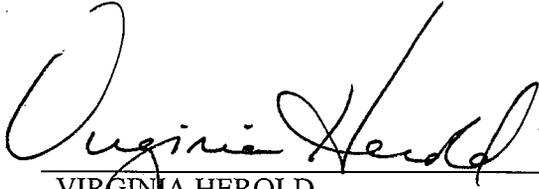
4 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
5 for unprofessional conduct in that Respondent used alcoholic beverages to the extent the use
6 impaired his ability to conduct with safety to the public the practice of pharmacy, as more fully
7 set forth in paragraphs 17-19, above.

8 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacist License Number RPH 36629, issued to Carter R.
13 Strom Carter R. Strom;
- 14 2. Ordering Carter R. Strom to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 10/5/09


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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