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

In the Matter of the Accusation Against: **WILLIAM ANDREW ALLEN, RPH** **2748 Villas Way** **San Diego, CA 92108** **Pharmacist License No. RPH 54535** Respondent.	Case No. 3412 **A C C U S A T I O N**

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 12, 2003, the Board of Pharmacy issued Pharmacist License Number RPH 54535 to William Andrew Allen (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 118, subdivision (b), of the Code provides 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.

STATUTORY PROVISIONS

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

7. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. 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:
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> (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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(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.

9. Section 4060 of the Code states, in pertinent part, that 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.

10. 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.

. . . .

(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.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1669 states:

. . . .

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

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

(2) Total criminal record.

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

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

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

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

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

COST RECOVERY

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. Dextroamphetamine, sold under the brand name Dexedrine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.

15. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(June 8, 2005 Criminal Conviction for Driving Under the Influence of Alcohol on February 24, 2005)

16. Respondent subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On or about June 8, 2005, in a criminal proceeding entitled *People of the State of California v. William A. Allen,* in San Diego County Superior Court, case number M956959, Respondent was convicted on his plea of guilty for violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor.

b. As a result of the conviction, on or about June 8, 2005, Respondent was sentenced to five years summary probation, 180 days in the county jail (suspended), completion of a MADD impact panel, completion of the education component of the First Conviction Program, and payment of fines, fees, and restitution in the amount of $1,750. Respondent was ordered not to drive with a measureable amount of alcohol/drugs in his system.

c. The circumstances that led to the conviction were that on or about February 24, 2005, Respondent was arrested by the California Highway Patrol for driving under the influence of alcohol.

SECOND CAUSE FOR DISCIPLINE

(January 27, 2009 Criminal Conviction for Driving Under the Influence of Alcohol & Drugs on April 6, 2008)

17. Respondent subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

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a. On or about January 27, 2009, in a criminal proceeding entitled *People of the State of California v. William Andrew Allen,* in San Diego County Superior Court, case number M064687, Respondent entered a plea of no contest, which the court accepted as a plea of guilty, and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the combined influence of alcohol and drugs, a misdemeanor.

b. As a result of the conviction, on or about January 27, 2009, Respondent was sentenced to five years summary probation, standard alcohol conditions, completion of a MADD impact panel, and payment of fines, fees, and restitution in the amount of $1,842. On or about March 4, 2009, Respondent was ordered to complete a Multiple Conviction Program.

c. The circumstances that led to the conviction were that on or about the evening of April 6, 2008, patrol officers with the San Diego Police Department conducted a traffic stop on Respondent after he was observed driving his SUV in downtown San Diego without the headlights on, failing to come to a complete stop at an intersection, and making an illegal U-turn. As the officer activated his emergency lights, Respondent side-swiped a parked vehicle as it yielded to the right. Respondent immediately got out of his vehicle and began making statements about being in violation of his DUI probation. The officers noted that Respondent spoke rapidly and appeared hyper, but his speech was slurred. His gait was unsteady, his eyes were watery and glassy and he had the odor of an alcoholic beverage on his breath. Respondent told the officer he was also taking the prescription medications Nasinex and Lexapro, as well as Claritin. Respondent insisted several times that he knew he was over the limit and did not want to be tested. Respondent failed the horizontal gaze nystagmus test. Based on Respondent's poor driving, his objective symptoms of intoxication, and his statements, Respondent was placed under arrest for driving under the influence. In a search of Respondent's vehicle incident to his arrest, the officers found 1.4 grams of marijuana wrapped in foil, a pipe used for smoking marijuana, and two Dexedrine pills. Respondent told the officer that the pills did not belong to him and that they must have fallen out of a prescription bottle he had delivered to a customer. Respondent was arrested and taken to police headquarters for booking. Respondent requested a breath test and gave two samples that measured with a blood alcohol

content (BAC) of 0.05%. Because Respondent appeared too impaired for a 0.05 percent BAC, the officer obtained two samples of Respondent's blood. The blood samples subsequently tested positive for cannabinoids (marijuana).

18. On November 19, 2008, an investigator with the Board spoke to Respondent via telephone. When the investigator asked Respondent about the marijuana found in his car, Respondent stated that the marijuana belonged to him and that he smoked it every now and then.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Multiple Misdemeanor Convictions Involving Alcohol)

19. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the Code in that on or about June 8, 2005, and January 27, 2009, in San Diego County Superior Court, Respondent was twice convicted of driving under the influence of alcohol and/or drugs, in violation of Vehicle Code section 23152, subdivision (a) as described in paragraphs 16-18, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Self-Administration of a Controlled Substance)

20. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that on or about April 6, 2008, Respondent tested positive for cannabinoids/Delta-9-THC (marijuana) as detailed in paragraph 17, above. Respondent further admitted to a Board investigator on or about November 19, 2008, that the marijuana found in his vehicle belonged to him and that he smoked it now and then. The self-administration of an illegal controlled substance constitutes unprofessional conduct and is substantially related to the qualifications, duties, and functions of a pharmacist.

FIFTH CAUSE FOR DISCIPLINE

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

21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that on or about on or about April 6, 2008, Respondent possessed dextroamphetamine and marijuana without a prescription in violation of Business and Professions Code sections 4022 and 4060 regulating controlled substances and dangerous drugs, as detailed in paragraphs 17-18,

above. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacist.

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 Pharmacist License Number RPH 54535, issued to William Andrew Allen;

2. Ordering William Andrew Allen 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: 10/27/09

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

SD2009804619