

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 SHERRY L. LEDAKIS  
Deputy Attorney General  
4 State Bar No. 131767  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2078  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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. 3732

12 **RONALD HIDEO YOSHITOMI**  
13 **3020 Cielo Place**  
14 **Carlsbad, CA 92009**

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

15 **Original Pharmacist License No. RPH 30056**

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 December 26, 1975, the Board of Pharmacy issued Original Pharmacist  
22 License Number RPH 30056 to Ronald Hideo Yoshitomi (Respondent). The Original Pharmacist  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on March 31, 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 permitted to take following the establishment of a conviction may be taken when the  
2 time for appeal has elapsed, or the judgment of conviction has been affirmed on  
3 appeal, or when an order granting probation is made suspending the imposition of  
4 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
5 the Penal Code.

6 . . . .

7 7. Section 492 of the Code states:

8 Notwithstanding any other provision of law, successful completion of any  
9 diversion program under the Penal Code, or successful completion of an alcohol and  
10 drug problem assessment program under Article 5 (commencing with Section  
11 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
12 agency established under Division 2 (commencing with Section 500) of this code, or  
13 any initiative act referred to in that division, from taking disciplinary action against a  
14 licensee or from denying a license for professional misconduct, notwithstanding that  
15 evidence of that misconduct may be recorded in a record pertaining to an arrest.

16 This section shall not be construed to apply to any drug diversion program operated  
17 by any agency established under Division 2 (commencing with Section 500) of this  
18 code, or any initiative act referred to in that division.

19 8. Section 493 of the Code states:

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

9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Section 4060 of the Code states:

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 pursuant to Section 3640.7, or furnished pursuant  
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section  
shall not apply to the possession of any controlled substance by a manufacturer,  
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,  
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or

1 physician assistant, when in stock in containers correctly labeled with the name and  
2 address of the supplier or producer.

3 11. Section 4301 of the Code states:

4 The board shall take action against any holder of a license who is guilty of  
5 unprofessional conduct or whose license has been procured by fraud or  
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is  
7 not limited to, any of the following:

8 ...

9 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
10 deceit, or corruption, whether the act is committed in the course of relations as a  
11 licensee or otherwise, and 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  
14 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
15 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
16 to any other person or to the public, or to the extent that the use impairs the ability of  
17 the person to conduct with safety to the public the practice authorized by the license.

18 ...

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

21 ...

22 (l) The conviction of a crime substantially related to the qualifications,  
23 functions, and duties of a licensee under this chapter. The record of conviction of a  
24 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
25 States Code regulating controlled substances or of a violation of the statutes of this  
26 state regulating controlled substances or dangerous drugs shall be conclusive  
27 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
28 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.

...

(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,

including regulations established by the board or by any other state or federal regulatory agency.

12. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173(a) states:

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.

14. Health and Safety Code section 11350(a) states:

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

### REGULATORY PROVISIONS

15. 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.

16. California Code of Regulations, title 16, section 1769(b) 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).

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

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

### 4 **COST RECOVERY**

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

### 9 **DRUGS**

10 18. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by  
11 Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and  
12 Professions Code section 4022. Hydrocodone is a narcotic pain reliever.

13 19. Lortab 5 or 7.5, brand names for a hydrocodone combination product, are Schedule  
14 III controlled substances under Health and Safety Code section 11056 subdivision (e)(4) and are  
15 dangerous drugs pursuant to Business and Professions Code section 4022.

### 16 **FIRST CAUSE FOR DISCIPLINE**

17 (Conviction of Substantially Related Crime)

18 20. Respondent is subject to disciplinary action under section 490(a) and 4301(l) in that  
19 he has sustained a conviction for theft from his employer which is substantially related to the  
20 qualifications, functions and duties as a pharmacist, as set forth below:

21 21. On June 18, 2006, Respondent was hired as a pharmacist at CVS Pharmacy, in  
22 Carlsbad, California.

23 22. On March 30, 2009, while reviewing the Prescription Drug Monitoring Report, staff  
24 at CVS Pharmacy observed that Lortab 10/500 was showing a high growth and negative cycle  
25 counts. On April 1, 2009, the pharmacy installed a covert DVR CCTV system to record activities  
26 in the pharmacy area of the store.

27 23. A controlled substance audit was completed by CVS for hydrocodone tablets by  
28 Pharmacist-in-charge R. B. on April 23, 2009. The audit showed a shortage of 485 pills. On  
April 24, 2009, a replacement DVR was installed to enable viewing of the video coverage. On

1 May 4, 2009, the videotape was reviewed. It showed that between April 13, 2009 and May 1,  
2 2009, on eight separate occasions, Respondent stole hydrocodone tablets by taking them out of  
3 the bottles and pouring the contents into his pants pocket.

4 24. On or about May 29, 2009, the Board received a letter from CVS Pharmacy,  
5 Carlsbad, that Respondent admitted to stealing 2,000 tablets of hydrocodone/APAP 7.5/500 mg.  
6 between November of 2008 and May of 2009.

7 25. During an interview with CVS Loss Prevention personnel, Respondent admitted to  
8 stealing approximately 2,000 tablets of hydrocodone/APAP 7.5-500 from CVS Pharmacy  
9 between November of 2008 and May of 2009. He also admitted taking small quantities of  
10 hydrocodone 10/325 and hydrocodone 5/500. When Respondent was asked if he had any drugs  
11 on him during the interview, he took 25 tablets of hydrocodone/APAP 7.5-500 and 4 tablets of  
12 hydrocodone/APAP 10-325 from his pockets. Respondent was arrested by DEA agents on the  
13 same day.

14 26. Before booking, Respondent was searched and an additional 43 tablets of  
15 hydrocodone were found in Respondent's front, right pants pocket and several unidentified pills  
16 in his front left pocket. Respondent stated that he began ingesting 2-3 pills per day, but because  
17 of a tolerance to the medication he was taking 20 pills per day. The theft of the hydrocodone was  
18 valued at \$1,311.96.

19 27. On May 13, 2009, a felony complaint was filed against Respondent alleging  
20 violations of Penal Code section 508 (theft from an employer), Health and Safety Code sections  
21 11350(a) (unlawful possession of controlled substances) and 11170 (self-prescribing of controlled  
22 substances).

23 28. On September 9, 2009, Respondent pleaded guilty to violating Penal Code section  
24 508 as a misdemeanor. Judgment on the Health and Safety Code section 11350(a) was deferred  
25 for 18 months to permit Respondent to complete a treatment program. He was sentenced to three  
26 years probation, payment of restitution to the victim, and payment of fines and penalties.

27 Respondent has until March 2011 to provide proof to the court that he completed a diversion

28 ///

1 program and at that time the charge for violating Health and Safety Code section 11170 will be  
2 dismissed.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Dishonesty: Obtained Controlled Substances by Fraud, Deceit or Subterfuge)

5 29. Respondent is subject to disciplinary action under Code section 4301 subdivision (f)  
6 in that he was dishonest when he obtained hydrocodone by means of theft from his employer,  
7 CVS Pharmacy, as set forth above in paragraphs 21 through 28.

8 **THIRD CAUSE FOR DISCIPLINE**

9 (Possession of Dangerous Drugs Without a Prescription)

10 30. Respondent is subject to disciplinary action under 4301 subdivisions (j) and (o) for  
11 violation of section 4060 and Health and Safety Code section 11350(a) in that he possessed  
12 controlled substances without a prescription, as set forth above in paragraphs 21 through 28.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Furnishing Dangerous Drugs Without a Prescription)

15 31. Respondent is subject to disciplinary action under sections 4301 subdivisions (j) (h)  
16 and (o) for violations of 4059 subdivision (a), and Health and Safety Code section 11170 in that  
17 he furnished to himself controlled substances without a prescription, as set forth above in  
18 paragraphs 21 through 28.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Self-Administration of Controlled Substances)

21 32. Respondent is subject to disciplinary action under sections 4301 subdivision (h), in  
22 that he self-administered controlled substances without a prescription, as set forth above in  
23 paragraphs 21 through 28.

24 **DISCIPLINE CONSIDERATIONS**

25 33. To determine the degree of discipline, if any, to be imposed on Respondent,  
26 Complainant alleges that on or about November 1, 1991, in a prior disciplinary action entitled *In*  
27 *the Matter of the Accusation Against Ronald Hideo Yoshitomi* before the Board of Pharmacy, in  
28 Case Number 1545. Respondent's license was revoked, the revocation was stayed and



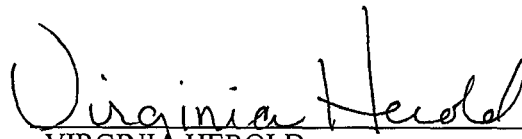
1 Respondent was placed on probation for three years, which included being suspended from the  
2 practice of pharmacy for 21 days. The facts that gave rise to the accusation were that Respondent  
3 committed theft by purchasing fertility drugs for his wife from his employer at cost and then  
4 billing the insurance company for the full retail price. During his employment, Respondent also  
5 took 15 Dexadrine tablets, a dangerous drug, without having a prescription and without paying  
6 for them. Respondent also admitted that during his employment at Pavillions Store #200, he took  
7 prescription items without paying for them and that he took other items such as a piece of fruit,  
8 magazines and motor oil without paying for them. That decision is now final.

9 PRAYER

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 Original Pharmacist License Number RPH 30056, issued to  
13 Ronald Hideo Yoshitomi
- 14 2. Ordering Ronald Hideo Yoshitomi to pay the Board of Pharmacy the reasonable costs  
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: 11/3/10



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