

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3749

12 **JEMAL ZENUNI**
13 **3687 4th Avenue, #515**
14 **San Diego, CA 92103**

ACCUSATION

15 **Pharmacist License No. RPH 57261**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 3, 2005, the Board of Pharmacy issued Pharmacist License
24 Number RPH 57261 to Jemal Zenuni (Respondent). The Pharmacist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on September 30,
26 2012, unless renewed.

1 JURISDICTION

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(a) of the Code states that "[e]very license issued may be suspended or
6 revoked."

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

11 STATUTORY AND REGULATORY PROVISIONS

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

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

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

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 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,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 4059 of the Code provides in part that a person may not furnish any
8 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

12 10. Section 4060 of the Code states:

13 No person shall possess any controlled substance, except that furnished to a
14 person upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
16 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
17 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
18 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
19 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
20 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
21 section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
23 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled
25 with the name and address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 stock of dangerous drugs and devices.

11. Section 4301 of the Code states:

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

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

1
2 (h) The administering to oneself, of any controlled substance, or the use of any
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

7
8
9 (j) The violation of any of the statutes of this state, or any other state, or of
10 the United States regulating controlled substances and dangerous drugs.

11
12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
14 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction
18 shall be conclusive evidence only of the fact that the conviction occurred. The
19 board may inquire into the circumstances surrounding the commission of the
20 crime, in order to fix the degree of discipline or, in the case of a conviction not
21 involving controlled substances or dangerous drugs, to determine if the conviction
22 is of an offense substantially related to the qualifications, functions, and duties of a
23 licensee under this chapter. A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is deemed to be a conviction within the meaning of this
25 provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting
27 probation is made suspending the imposition of sentence, irrespective of a
28 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.

29
30 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
31 abetting the violation of or conspiring to violate any provision or term of this chapter
32 or of the applicable federal and state laws and regulations governing pharmacy,
33 including regulations established by the board or by any other state or federal
34 regulatory agency.

35 12. Section 4327 of the Code states that:

36 Any person who, while on duty, sells, dispenses or compounds any drug while
37 under the influence of any dangerous drug or alcoholic beverages shall be guilty of a
38 misdemeanor.

1 13. Health and Safety Code section 11170 provides that no person shall prescribe,
2 administer, or furnish a controlled substance for himself.

3 14. Health and Safety Code section 11171 provides that no person shall prescribe,
4 administer, or furnish a controlled substance except under the conditions and in the manner
5 provided by this division.

6 15. Health and Safety Code section 11173(a) provides that no person shall obtain or
7 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
8 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
9 (2) by the concealment of a material fact.

10 16. California Code of Regulations, title 16, section 1769, states:

11

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

- 15 (1) Nature and severity of the act(s) or offense(s).
- 16 (2) Total criminal record.
- 17 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 18 (4) Whether the licensee has complied with all terms of parole, probation,
19 restitution or any other sanctions lawfully imposed against the licensee.
- 20 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

1 **COST RECOVERY**

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

6 **DRUG**

7 19. Hydrocodone/APAP, also known by the brand names, Vicodin, Norco, Vicodin ES
8 and Vicodin HP, is a Schedule III controlled substance as designated by Health and Safety Code
9 section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section
10 4022. Hydrocodone/APAP is used as a narcotic analgesic in the relief of pain.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct-Use of a Controlled Substance)**

13 20. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
14 he administered to himself controlled substances, namely hydrocodone/APAP, while performing
15 his functions as a pharmacist. The circumstances are as follows:

16 a. Respondent began working as an overnight staff pharmacist at Walgreens
17 Pharmacy #6656 located at 3222 University Avenue in San Diego, California, in December 2009.
18 After the Assistant Store Manager observed Respondent and believed him to be under the
19 influence of drugs, and after the Pharmacist-in-Charge received a complaint from a customer that
20 Respondent appeared to be intoxicated and under the influence of a medication on or about
21 February 20 and 21, 2010, Walgreen's Loss Prevention Supervisor and Store Manager
22 commenced an investigation and interviewed Respondent.

23 b. Respondent admitted to them that he had drank alcohol before commencing a
24 shift and then later admitted that he had stolen a controlled substance from the pharmacy.
25 According to the Store Manager, Respondent "admitted to stealing 10 Norco 10/325mg over the
26 past two weeks. [Respondent] stated that he had a problem with being addicted to Norco
27 approximately 18 months ago and that recently was having stress and started taking the Norco
28 without paying for them and having prescriptions for the items."

1 c. Respondent admitted in a July 27, 2010 written statement to the Board's
2 investigator that on or about February 20 or 21, 2010, before commencing his shift, he took "a
3 Vicodin tablet to help with pain in my legs and a broken nose. I might have been a little bit loopy
4 upon arriving."

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct-Violations of the Chapter)**

7 21. Respondent is subject to disciplinary action for unprofessional conduct under section
8 4301(o) of the Code in that while on duty at Walgreens, Respondent filled and dispensed
9 prescriptions to Walgreen's customers while under the influence of controlled substances in
10 violation of the Pharmacy Act, including Code section 4327, as evidenced by his admissions and
11 his conduct as set forth in paragraph 20 above, incorporated herein by reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

14 22. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
15 Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code
16 sections 11170, 11171, and 11173(a)) as set forth in paragraph 20 above, incorporated herein by
17 reference.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Commission of Acts Involving Dishonesty or Deceit)**

20 23. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
21 Respondent committed an act involving dishonesty or deceit, namely, Respondent admitted that
22 he stole controlled substances from his employer, as is set forth in paragraph 20 above,
23 incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(March 8, 2010 Conviction for DUI on August 17, 2009)

24. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Code in that he was convicted of crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On or about March 8, 2010, in a criminal proceeding entitled *The People of the State of California v. Jemal Zenuni*, in San Diego County Superior Court case number M089783, Respondent was convicted on his plea of guilty for violation of Vehicle Code section 23152(b), driving with a blood alcohol content of .08 percent or more, a misdemeanor.

b. As a result of his conviction, Respondent was placed on summary probation for 5 years, ordered to pay all applicable fines, fees and restitution, to enroll and complete a nine month First Offender Alcohol Program and to attend a MADD Victim Impact Panel.

c. The circumstances that led to the conviction were that on or about August 17, 2009, the San Diego Police Department was dispatched to the intersection of Lamont Street and Garnet Avenue in San Diego, California, to investigate a report of a possible drunk driver and a single vehicle collision. When a police officer arrived at the intersection, he observed Respondent's vehicle located at the northeast corner of the intersection, on the sidewalk with the front of the vehicle against the traffic signal pole. He further observed Respondent sitting in the driver's seat of that vehicle, smelled the strong odor of an alcoholic beverage in the vehicle and discovered a large bottle of Ketel One Vodka about one quarter full in the vehicle. He also noted that Respondent's eyes were blood shot and glassy, his speech was slurred and there was a strong odor of an alcoholic beverage emanating from his breath. As he exited his vehicle, Respondent stumbled and could not maintain his balance. Respondent's breath tests resulted in a .41 percent and a .41 percent blood alcohol content (BAC).

1 SIXTH CAUSE FOR DISCIPLINE

2 **(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)**

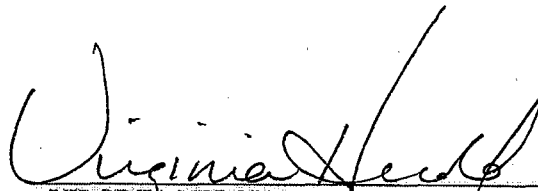
3 25. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
4 Respondent used alcohol to an extent or manner that was dangerous to himself or others on
5 August 17, 2009, as is set forth above in paragraph 24, incorporated herein by reference.

6 PRAAYER

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

- 9 1. Revoking or suspending Pharmacist License Number RPH 57261, issued to Jemal
10 Zenuni;
- 11 2. Ordering Jemal Zenuni to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: 5/9/11


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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