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1 2 3 4 5 6 7 8 9 10	BOARD OF DEPARTMENT OF C	RE THE PHARMACY ONSUMER AFFAIRS
11	STATE OF C	CALIFORNIA
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13	In the Matter of the Accusation Against:	Case No. 3753
14	JOHN STOCKER P. O. Box 521 Cabazon, CA 92230	ACCUSATION
15	Pharmacist License No. RPH 46011	
16	Respondent.	
17		
18	Complainant alleges:	
19	PAR	TIES
20	1. Virginia Herold (Complainant) bring	s this Accusation solely in her official capacity
21	as the Executive Officer of the Board of Pharmad	cy, Department of Consumer Affairs.
22	2. On or about March 19, 1993, the Boa	ard of Pharmacy issued Pharmacist License
23	Number RPH 46011 to John Stocker (Responder	nt). The Pharmacist License expired on July 31,
24	2010, and has not been renewed.	
25	JURISD	ICTION
26	3. This Accusation is brought before th	e Board of Pharmacy (Board), Department of
27	Consumer Affairs, under the authority of the foll	owing laws. All section references are to the
28	Business and Professions Code (Code) unless ot	nerwise indicated.
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		Accusation

1	4. Section 4300, subdivision (a) of the Code states that "Every license issued may be
2	suspended or revoked."
3	5. Section 118, subdivision (b) of the Code provides that the suspension, expiration,
4	surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
5	disciplinary action during the period within which the license may be renewed, restored, reissued
6	or reinstated.
7	6. Section 4022 of the Code states:
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9	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
10	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
11	(b) Any device that bears the statement: "Caution: federal law restricts this
12	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
13	or order use of the device.
14	(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.
15	<ol> <li>Section 4301 of the Code states:</li> </ol>
16	The board shall take action against any holder of a license who is guilty of
17 18	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:
19	•••••
20	(h) The administering to oneself, of any controlled substance, or the use of any
,21	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
22	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.
23	••••
24	DRUGS
25	8. Hydromorphone is a Schedule II controlled substance as designated by Health and
26	Safety Code Section 11055, subdivision (b)(1)(K) and is a dangerous drug pursuant to Business
27	and Professions Code section 4022.
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	Accusation

9. 1 Acetaminophen/hydrocodone bitartrate, sold under the brand names Vicodin and Norco, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code 4 section 4022.

### COST RECOVERY

10. Section 125.3 of the Code states, in pertinent part, that the Board may request the 6 administrative law judge to direct a licentiate found to have committed a violation or violations of 7 8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 9 enforcement of the case.

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#### FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Driving Under the Influence of Alcohol on July 2, 2008)

11. 12 Respondent subjected his license to discipline under section 4301, subdivision (h) of the Code in that he used alcohol to an extent to be dangerous to himself and others. The 13 circumstances are as follows: 14

15 a. On or about the evening of July 2, 2008, a California Highway Patrol (CHP) Officer was patrolling the area of Cabazon when he observed a Mazda Miata, driven by 16 Respondent, traveling southbound in the northbound lane approaching the CHP Officer head-on. 17 The officer had to move his vehicle to the right in order to avoid colliding with Respondent. The 18 CHP Officer executed a U-turn and conducted a traffic stop. Upon contacting Respondent, the 19 officer noticed an odor of an alcoholic beverage emanating from Respondent. Respondent told 20 the officer he had consumed one beer earlier in the afternoon. Respondent was asked to exit his 21 22 vehicle; he swayed from side to side, his speech was slow and slurred, and his eyes were red and watery. Respondent agreed to submit to a series of field sobriety tests which he failed to perform 23 as explained and demonstrated. Respondent was arrested for driving under the influence of 24 alcohol. Respondent provided a blood sample which tested at .21 % blood alcohol concentration 25 (BAC). 26

27 b. On or about September 2, 2008, a complaint was filed in a criminal proceeding entitled People of the State of California v. John Edward Stocker, in Riverside County 28

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1	Superior Court, case number BAM036039, charging Respondent with violating Vehicle Code
_2	section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section
3	23152, subdivision (b), driving with a BAC of .08 percent or higher, misdemeanors. On
4	September 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty.
5	Respondent was released on his own recognizance and signed an agreement promising to appear
6	at all times as ordered by the Court or magistrate, and that failure to appear would be charged as
7	a separate and distinct offense.
8	c. Following multiple motions to continue the trial date, Respondent failed to
9	appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
10	remains active.
11	SECOND CAUSE FOR DISCIPLINE
12	(Unprofessional Conduct Driving Under the Influence of
13	Alcohol/Drugs on December 28, 2008)
14	12. Respondent subjected his license to discipline under section 4301, subdivision (h)
15	of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
16	circumstances are as follows:
17	a. On or about the evening of December 28, 2008, a California Highway
18	Patrol (CHP) Officer responded to assist a Riverside County Sheriff's Deputy with a DUI
19	investigation. The Deputy related that he had observed Respondent standing next to his Mazda,
20	which was parked on the side of a busy thoroughfare. Respondent's trousers were down around
21	his ankles, he had numerous fresh and bleeding abrasions to his head, he was staggering about $\sim$
22	dramatically, and he was covered in his own feces. The CHP Officer conducted a records check
23	and discovered Respondent's driver's license had been suspended as a result of the DUI arrest
24	detailed in paragraph, 12, above. The officer noticed the distinct odor of an alcoholic beverage
25	emanating from Respondent's breath and person. Respondent was stuperous, he had red, watery
26	eyes, slack facial features, and was very disheveled in appearance. Respondent told the officer he
27	had consumed one beer and one glass of wine earlier, and that he had consumed one-half of a
28	tablet of Norco for pain. Respondent stated that he was on his way home but needed to stop to
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Accusation

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defecate on the side of the road. Respondent agreed to submit to a series of field sobriety tests which he failed to perform as explained and demonstrated. Respondent was arrested for driving under the influence. At the Riverside County Sheriff's Department facility, a blood sample was 4 drawn from Respondent which tested at .21 percent BAC, and tested positive for the opiates hydrocodone (Vicodin), and hydromorphone.

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h. On or about March 4, 2009, a complaint was filed in a criminal proceeding 6 entitled People of the State of California v. John Edward Stocker, in Riverside County Superior 7 Court, case number BAM037741, charging Respondent with violating Vehicle Code section 8 23152, subdivision (a), driving under the combined influence of alcohol and drugs, with an 9 additional allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or 10 more; Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or higher; 11 and Vehicle Code section 14601.5, subdivision (a), driving on a suspended driver's license, 12 misdemeanors. On March 11, 2009, Respondent was arraigned on the charges and entered a plea 13 of not guilty. Respondent was released on his own recognizance and signed an agreement 14 promising to appear at all times as ordered by the Court or magistrate, and that failure to appear 15 would be charged as a separate and distinct offense. 16

Following multiple motions to continue the trial date, Respondent failed to 17 c. appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and 18 remains active. 19

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# **THIRD CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct -- Driving Under the Influence of Alcohol on March 11, 2009) 13. 22 Respondent subjected his license to discipline under section 4301, subdivision (h) of the Code in that he used alcohol to an extent to be dangerous to himself and others. The 23 circumstances are as follows: 24

25 a. On or about the evening of March 11, 2009, a CHP Officer was patrolling the area of Cabazon when he observed a Ford Crown Victoria, driven by Respondent, traveling at 26 approximately 5 mph and coming to a stop on the side of the road. The right, rear wheel area was 27 smoking. As the officer pulled onto the shoulder behind Respondent, he observed Respondent 28

exit his vehicle and walk around it in a confused manner. The vehicle quickly became engulfed 1 in fire. The CHP Officer called the fire department, and then yelled at Respondent to get away 2 3 from the vehicle. After several verbal commands, Respondent slowly stumbled his way to the 4 officer. Respondent told the CHP Officer that he had a flat tire and had been looking for a place to pull over. The officer checked Respondent's name and birth date and discovered his driving 5 privileges had been suspended. When speaking to Respondent, the officer noted a strong odor of 6 an alcoholic beverage emanating from Respondent. His speech was very slurred, and his eyes 7 were red and watery. Respondent told the officer he had consumed one beer earlier in the 8 evening. The CHP Officer had to hold Respondent's upper arm to assist him with his balance. 9 Based on Respondent's condition, he was asked to perform only two field sobriety tests. 10 Respondent was unable to perform the tests as explained and demonstrated. Respondent was 11 arrested for driving under the influence of alcohol. Respondent provided a blood sample, which 12 tested at .15 % blood alcohol concentration (BAC). 13

14 b. On or about May 21, 2009, a complaint was filed in a criminal proceeding entitled People of the State of California v. John Edward Stocker, in Riverside County Superior 15 Court, case number BAM038434, charging Respondent with violating Vehicle Code section 16 23152, subdivision (a), driving under the influence of alcohol, with an additional allegation that 17 Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle Code section 18 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle Code section 19 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors. On September 20 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty. Respondent 21 was released on his own recognizance signing an agreement promising to appear at all times as 22 ordered by the Court or magistrate, and that failure to appear would be charged as a separate and 23 distinct offense. 24

c. Following multiple motions to continue the trial date, Respondent failed to
appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
remains active.

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## FOURTH CAUSE FOR DISCIPLINE

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## (Unprofessional Conduct -- Driving Under the Influence of Alcohol on July 28, 2009)

14. Respondent subjected his license to discipline under section 4301, subdivision (h) of the Code in that he used alcohol to an extent to be dangerous to himself and others. The circumstances are as follows:

On or about the evening of July 28, 2009, a CHP Officer was patrolling the 6 ิล area of Cabazon when he observed a Mazda Miata, driven by Respondent, driving in an erratic 7 manner. The officer conducted a traffic stop. When speaking to Respondent, the officer smelled 8 the odor of an alcoholic beverage emanating from Respondent; his speech was slow and slurred, 9 and his eyes were red and watery. The officer checked Respondent's name and birth date and 10 determined that his driving privileges had been suspended. Respondent told the officer he had 11 consumed one glass of wine at the casino earlier in the evening. Respondent stumbled as he 12 exited his vehicle. The CHP officer noted that Respondent had obvious back problems and some 13 bandaged injuries. Based on Respondent's condition, he was asked to perform only two field 14 sobriety tests. Respondent was unable to perform the tests as explained and demonstrated. 15 Respondent was arrested for driving under the influence of alcohol. Respondent's vehicle was 16 searched and the officer located an opened can of Bud Light beer under the driver's seat. The can 17 was cool and half full. Respondent provided a blood sample which tested at .27 % BAC. 18

b. On or about September 25, 2009, a complaint was filed in a criminal 19 proceeding entitled People of the State of California v. John Edward Stocker, in Riverside County 20 Superior Court, case number BAM039567, charging Respondent with violating Vehicle Code 21 section 23152, subdivision (a), driving under the influence of alcohol, with an additional 22 allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle 23 24 Code section 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle 25 Code section 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors. 26 Respondent failed to appear at his October 15, 2009 arraignment. A warrant was issued for his arrest and remains active. 27

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1	DISCIPLINARY CONSIDERATIONS
2	15. To determine the degree of discipline, if any, to be imposed on Respondent,
3	Complainant alleges:
4	a. On or about May 4, 2010, the Board issued Citation Number CI 2009 43004 to
5	Respondent. The Board's investigation established that Respondent committed the following
6	violations while employed as a pharmacist-in-charge of a Kmart Pharmacy:
7	(1) Respondent violated California Code of Regulations, section 1714,
8	subdivision (d), in that from April 30, 2007 to January 31, 2009, at least 17,792 tablets of
9	controlled substances and 1630 ml of controlled substances were lost from his pharmacy due to
10	poor recordkeeping.
11	(2) Respondent violated California Code of Regulations, section 1707.2,
12	subdivision (f) in that at a Board inspection on November 18, 2009, there was no Notice to
13	Consumers posted in a place conspicuous to and readable by pharmacy consumers.
14	(3) Respondent violated Business and Professions Code section 4342,
15	subdivision (b) in that on November 18, 2009, a Board inspector found expired Lipram-PN,
16	Norco, Trileptal, Zebutal, Lescol XL, Clorazepate, Imipramine, and Prednisone on the pharmacy
17	shelves, ready to be dispensed.
18	(4) Respondent violated Business and Professions Code section 4076,
19	subdivision (a)(11)(A) in that on November 18, 2009, the Board inspector found three
20	prescription bottles that did not state the physical description of the dispensed medication on the
21	prescription label.
22	(5) Respondent violated 21 C.F.R. section 1305.05 in that on November 18,
23	2009, the Board inspector located DEA-222 medication order forms signed by a person who did
24	not have a power of attorney allowing him to sign and order Schedule II controlled substances.
25	(6) Respondent violated Business and Professions Code section 4305,
26	subdivision (c) in that Respondent was terminated from his employment as pharmacist-in-charge
27	in September 2009 and he did not report this fact to the Board within 30 days.
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1       b. As a result of the Citation, Respondent was fined in the amount of \$2,400.00,         2       due on or before June 3, 2010. Respondent has not paid the fine.         3 <b>PRAYER</b> 4       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:         6       1. Revoking or suspending Pharmacist License Number RPH 46011, issued to John         7       Stocker;         8       2. Ordering John Stocker to pay the Board of Pharmacy the reasonable costs of the         9       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.         13       DATED:       2/3/11         14       YIRQINIA HEROLD         15       Board of Pharmacy         16       DATED:       2/3/11         17       SD2010703340         70422037.doc       DATED:         20       Date of California         21       Complainant         22       Complainant         23       Complainant         24       Complainant         25       Complainant         26       Complainant		
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