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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3813

11 **DAREK TERRELL JONES**
12 **P.O. Box 51999**
13 **Pacific Grove, CA 93950**
14 **Pharmacist License No. RPH 59702**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about July 3, 2007, the Board of Pharmacy issued Pharmacist License No. RPH
21 59702 to Darek Terrell Jones (Respondent). The License was in full force and effect at all times
22 relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

23 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and will require a new application.

14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
16 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
17 not be limited to, any of the following:

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

21 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
22 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
23 oneself, [another licensee, person, or the public], or to the extent that the use impairs the ability of
24 the person to conduct with safety to the public the practice authorized by the license.

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

27 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
28 of a licensee under this chapter.

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

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

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

12 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
13 drug or dangerous device except upon the prescription of an authorized prescriber.

14 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
15 controlled substance, except that furnished upon a valid prescription/drug order.

16 11. Health and Safety Code section 11170 provides that no person shall prescribe,
17 administer, or furnish a controlled substance for himself or herself.

18 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
19 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
20 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
21 or subterfuge; or (2) by the concealment of a material fact.

22 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
23 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
24 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

25 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
26 person to use or be under the influence of any controlled substance in Schedule II (Health and
27 Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when
28 administered by or under the direction of an authorized licensee.

1 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
2 administrative law judge to direct a licentiate found to have committed a violation of the licensing
3 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 16. Section 4021 of the Code states:

6 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
7 11053) of Division 10 of the Health and Safety Code.”

8 17. Section 4022 of the Code states, in pertinent part:

9 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
10 except veterinary drugs that are labeled as such, and includes the following:

11 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
12 prescription,’ ‘Rx only,’ or words of similar import. . . .

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
16 compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III
17 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
18 drug as designated by Business and Professions Code section 4022. The varying compounds are
19 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

20 19. **Valium** is a brand name for **diazepam**, a Schedule IV controlled substance as
21 designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by
22 Business and Professions Code section 4022. It is an anxiety-reducing/depressant drug.

23 20. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as
24 designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated
25 by Business and Professions Code section 4022. It is an anxiety-reducing/depressant drug.

26 21. **Fastin** and **Adipex** are brand names for **phentermine**, a Schedule IV controlled
27 substance as designated by Health and Safety Code section 11057(f)(4) and a dangerous drug as
28 designated by Business and Professions Code section 4022. It is a stimulant/anorexant drug.

1 22. **Ambien** is a brand name for **zolpidem**, a Schedule IV controlled substance as
2 designated by Health and Safety Code section 11057(d)(32) and a dangerous drug as designated
3 by Business and Professions Code section 4022. It is a depressant drug/sleep aid.

4 23. **Soma** is a brand name for **carisoprodol**, a dangerous drug as designated by Business
5 and Professions Code section 4022. It is a muscle relaxant drug.

6 FACTUAL BACKGROUND

7 24. From an unknown start date until on or about April 13, 2010, Respondent was
8 employed by Costco pharmacies as a staff pharmacist in at least two pharmacies: Costco #472 in
9 Salinas, CA (PHY 43162) and Costco # 131 in Sand City, CA (PHY 40373), where by virtue of
10 his licensure and employment he had access to controlled substances and dangerous drugs.

11 25. During his Costco employment, Respondent used this access to divert/steal, and self-
12 administer, controlled substances/dangerous drugs, including **Hydrocodone with APAP**.

13 26. The exact number of instances of diversion/theft by Respondent, and the full quantity
14 of controlled substances or dangerous drugs diverted/stolen, are not known, but investigations by
15 Costco Pharmacy, police, and Board Inspector(s) revealed/reported the following:

16 a. On or about January 21, 2010, Respondent was stopped by California Highway
17 Patrol Officer(s) after he was observed driving erratically, including crossing the double-yellow
18 lane divider and nearly colliding with oncoming traffic. There was a smell of alcohol from his
19 vehicle, and Respondent displayed objective signs or symptoms of being intoxicated or under the
20 influence of alcohol or drugs, including red and watery eyes and slurred speech. Respondent had
21 problems with his balance and could not perform Field Sobriety Tests (FSTs), but Respondent's
22 measured blood alcohol (breathalyzer readings of 0.043 and 0.041) did not exceed the legal limit.
23 A certified Drug Recognition Evaluator (DRE) officer conducted an examination and determined
24 that Respondent was under the influence of a combination of alcohol, a CNS depressant, a CNS
25 stimulant, and a narcotic analgesic. Respondent was placed under arrest for driving under the
26 influence of alcohol and/or drugs (Vehicle Code section 23152(a)), and transported to the County
27 Jail. Prior to entry, Respondent tried to conceal a sock down the back of his pants. A search of
28 the sock revealed several (16 tablets) prescription pharmaceuticals, later identified as:

- 1 • three (3) blue tablets of **Hydrocodone with APAP 10/650mg**;
- 2 • two (2) white tablets of **Hydrocodone with APAP 10/660mg**;
- 3 • two (2) blue tablets of **Hydrocodone with APAP 10/500mg**;
- 4 • six (6) white tablets of **Carisoprodol 350mg**; and
- 5 • three (3) blue tablets of **Diazepam 10mg**.

6 b. On or about April 8, 2010, Respondent was working at Costco #472 (Salinas).
7 A pharmacy technician also working that day saw Respondent pour **Hydrocodone with APAP**
8 tablets from a stock bottle into his hand, and then place them in his pocket. When Respondent
9 was confronted by a manager and a witness and asked to empty his pockets, one pocket contained
10 approximately five (5) to eight (8) tablets of yellow **Hydrocodone with APAP 10/325mg** and
11 approximately twenty (20) white tablets of **Soma (Carisoprodol 350mg)**. When the manager
12 sought to confiscate the drugs for investigation purposes, Respondent picked up all 5-8 of the
13 **Hydrocodone with APAP** tablets, put them in his mouth, and swallowed them. Respondent later
14 denied that there ever had been any **Hydrocodone** tablets, or that he had swallowed them.

15 c. The pharmacy inventory for that day showed a loss/shortage of six (6) tablets of
16 **Hydrocodone with APAP 10/325mg** and twenty (20) tablets of **Carisoprodol 350mg**.

17 d. On or about April 9, 2010, Costco # 472 (Salinas) submitted a Report of Theft
18 or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a theft of
19 six (6) tablets of **Hydrocodone with APAP 10/325mg**, attributed to Respondent's pilferage.

20 e. On or about April 15, 2010, Costco # 131 (Sand City) submitted a Report of
21 Theft or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a
22 theft of 141 tablets **Diazepam 10mg (Valium)**, 33 tablets **Hydrocodone with APAP 5/500mg**,
23 21 tablets **Hydrocodone with APAP 5/325mg**, 19 tablets **Hydrocodone with APAP 10/325mg**,
24 64 tablets **Lorazepam 1mg (Ativan)**, 11 tablets **Hydrocodone with APAP 10/500mg**, 14 tablets
25 **Hydrocodone with APAP 10/325mg**, 10 tablets **Hydrocodone with APAP 7.5/325mg**, 16
26 tablets **Phentermine 37.5mg (Fastin/Adipex)**, 17 tablets **Zolpidem (Ambien)**, 21 tablets
27 **Hydrocodone with Ibuprofen**, and 143 tablets **Carisoprodol 350mg (Soma)**.

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1 f. On or about April 30, 2010, Costco Pharmacy reported to the Board that on or
2 about April 13, 2010 Respondent had been terminated from Costco for theft of prescription drugs.

3 g. On or about May 11, 2010, Respondent admitted to Board Inspector(s) that he
4 had used "bad judgment" during the incident leading to his arrest. In response to a question about
5 whether he had an addiction problem, Respondent admitted that "at one point" his drug use may
6 have gotten "out of hand," though he felt that as of that date he was moving past that.

7 FIRST CAUSE FOR DISCIPLINE

8 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

9 27. Respondent is subject to discipline under section 4301(f) of the Code, in that
10 Respondent, as described in paragraphs 24 to 26 above, committed acts involving moral
11 turpitude, dishonesty, fraud, deceit, or corruption.

12 SECOND CAUSE FOR DISCIPLINE

13 (Self-Administration of Controlled Substance(s))

14 28. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
15 and/or (o) of the Code and/or Health and Safety Code section 11170, in that Respondent, as
16 described in paragraphs 24 to 26 above, administered controlled substance(s) to himself.

17 THIRD CAUSE FOR DISCIPLINE

18 (Furnishing of Controlled Substance(s))

19 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
21 in paragraphs 24 to 26 above, furnished to himself or another without a valid prescription, and/or
22 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Possession of Controlled Substance(s))

25 30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
27 in paragraphs 24 to 26 above, possessed, conspired to possess, and/or assisted in or abetted
28 possession of, a controlled substance, without a prescription.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 24 to 26 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Unlawful Use of Narcotic Controlled Substances)

9 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
10 and/or Health and Safety Code section 11550, in that, as described in paragraphs 24 to 26 above,
11 Respondent used or was under the influence of, conspired to use/be under the influence of, and/or
12 assisted in or abetted use/being under the influence of, certain identified controlled substances,
13 not administered by or under the direction of an authorized licensee.

14 SEVENTH CAUSE FOR DISCIPLINE

15 (Conviction of Substantially Related Crime(s))

16 33. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
17 Code, for conviction of a substantially related crime, in that on or about June 28, 2010, in the
18 criminal case *People v. Jones, Darek Terrell*, Case No. SS100631A in Monterey County Superior
19 Court, Respondent was convicted of violating Vehicle Code section 23152(a) (Driving Under the
20 Influence of Alcohol and/or Drugs), a misdemeanor, as follows:

21 a. On or about April 12, 2010, based on the conduct described in paragraph 26.a.
22 above, Respondent was charged in Case No. SS100631A with violating: (1) Health and Safety
23 Code section 11352(a) (Transportation for Purposes of Sale of Narcotic Controlled Substance), a
24 felony; (2) Health and Safety Code section 11350(a) (Illegal Possession of Controlled Substance),
25 a felony; (3) Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol and/or
26 Drugs), a misdemeanor; (4) Health and Safety Code section 11550(b) (Using or Being Under the
27 Influence of a Controlled Substance), a misdemeanor; and (5) Business and Professions Code
28 section 4060 (Possession of Drug Without Prescription), a misdemeanor.

1 b. On or about June 28, 2010, in Case No. SS100631A, Respondent pleaded nolo
2 contendere to count 3 (misdemeanor violation of Vehicle Code section 23152(a)) and was found
3 guilty. A factual basis for the plea was found. All remaining counts were dismissed pursuant to
4 the plea agreement. Imposition of sentence was suspended in favor of a period of probation for
5 five (5) years, on terms and conditions including five (5) days in County Jail (2 days CTS), with
6 eligibility for the Work Alternative Program, enrollment in the First Offender Alcohol Program,
7 search, drug/alcohol testing, and field sobriety terms, and fines and fees.

8 EIGHTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

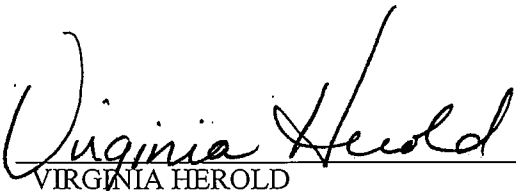
10 34. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 24 to 33 above, engaged in unprofessional conduct.

12
13 PRAYER

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

- 16 1. Revoking or suspending Pharmacist License No. RPH 59702, issued to Darek Terrell
17 Jones (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21
22 DATED: 7/14/11


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

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