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

11 In the Matter of the Accusation Against:

Case No. 3873

12 **DENNIS MICHAEL ZETTER**
13 **8518 Madcuff Ct.**
Stockton, CA 95209
14 **Pharmacist License No. RPH 28178**

A C C U S A T I O N

15 Respondent.

16
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 April 24, 1973, the Board of Pharmacy issued Pharmacist License
22 Number RPH 28178 to Dennis Michael Zetter (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December
24 31, 2010, 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 4. Section 4301 of the Code states in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct... Unprofessional conduct shall include, but is not limited to, any of the following:

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

7 ...

8 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
9 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
10 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
11 to the extent that the use impairs the ability of the person to conduct with safety to the public the
12 practice authorized by the license.

13 ...

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

16 ...

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

21 ...

22 5. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
24 humans or animals, and includes the following:

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

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1 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale
2 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

4 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006."

6 6. Section 4327 of the Code states:

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

9 7. Section 4060 of the Code states:

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

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

24 8. Section 125.3 of the Code provides, in pertinent part, that the
25 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
26 have committed a violation or violations of the licensing act to pay a sum not to exceed the
27 reasonable costs of the investigation and enforcement of the case.

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1 9. Health & Safety Code Section 11350(a) provides:

2 “(a) Except as otherwise provided in this division, every person who possesses (1) any
3 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
4 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
5 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
6 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
7 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
8 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

9 10. Health & Safety Code Section 11377(a) provides:

10 “(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
11 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
12 Business and Professions Code, every person who possesses any controlled substance which is
13 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
14 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
15 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
16 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
17 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
18 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
19 than one year or in the state prison.

20 11. **Vicodin or Norco** is the brand name of the generic drug hydrocodone/
21 acetaminophen, an analgesic used for the control of pain, and is a schedule III controlled
22 substance.

23 12. **Promethazine/Codeine** is a syrup used for control of cough and is a Schedule V
24 Controlled Substance.

25 13. **Acetaminophen/Codeine** is an analgesic used for the control of pain and is a
26 Schedule III Controlled Substance.

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1 14. **Xanax** is the brand name of the generic drug Alprazolam, an anti-anxiety agent used
2 for control of nerves, and is a Schedule IV Controlled Substance.

3 15. **Valium** is the brand name of the generic drug diazepam and is a tranquilizer used for
4 sleep and nerves, and is a Schedule IV Controlled Substance.

5 16. **Soma** is the brand name of the generic drug Carisprodol used for back pain and is a
6 dangerous drug pursuant to Business and Professions Code section 4022.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Corrupt Acts--Stealing Controlled Substances)**

9 17. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(f) in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or
11 corruption. The circumstances are as follows:

12 18. On and between the dates of mid 2009 and June 2010 respondent stole unknown
13 quantities of various drugs including controlled substances from eight (8) Rite Aid pharmacy
14 locations in the Central Valley area where he worked as a relief pharmacist. Controlled
15 Substances stolen included Vicodin, Tylenol with Codeine, Diazepam, Alprazolam, and
16 Promethazine with Codeine syrup.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unlawful Possession of Controlled Substance Medications)**

19 19. Respondent is subject to disciplinary action under section 4060, 4301(j) and (o), by
20 and through his violations of Health & Safety Code sections 11350(a) and 11377(a) for
21 unlawful possession of various controlled substances as follows:

22 20. On and between the dates of mid 2009 and June 2010 respondent possessed unknown
23 quantities of various drugs including controlled substances which he stole from eight (8) Rite Aid
24 pharmacy locations in the Central Valley area where he worked as a relief pharmacist. Controlled
25 Substances possessed included Vicodin, Tylenol with Codeine, Diazepam, Alprazolam, and
26 Promethazine with Codeine syrup.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unlawful Self-Administration of Controlled Substances)**

3 21. Respondent is subject to disciplinary action under section 4301(h) in that he
4 administered himself various controlled substances without a prescription as follows:

5 22. On and between the dates of mid 2009 and June 2010 respondent self-administered
6 unknown quantities of various drugs including controlled substances which he stole from eight
7 (8) Rite Aid pharmacy locations in the Central Valley area where he worked as a relief
8 pharmacist. Controlled Substances self-administered included Vicodin, Tylenol with Codeine,
9 Diazepam, Alprazolam, and Promethazine with Codeine syrup.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Working as a Pharmacist While Under the Influence of Controlled Substances)**

12 23. Respondent is subject to disciplinary action under sections 4327 and 4301(o) in that
13 he worked as a pharmacist and sold, dispensed, or compounded drugs while under the influence
14 of controlled substances as follows:

15 24. On and between the dates of mid 2009 and June 2010 respondent self-administered
16 unknown quantities of various drugs including controlled substances which he stole from eight
17 (8) Rite Aid pharmacy locations in the Central Valley area where he worked as a relief
18 pharmacist. Respondent self-administered the controlled substances such that he was under the
19 influence while working shifts and sold, dispensed, and/or compounded drugs while dispensing
20 prescriptions as a pharmacist at Rite Aid. Controlled Substances self-administered included
21 Vicodin, Tylenol with Codeine, Diazepam, Alprazolam, and Promethazine with Codeine syrup.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacist License Number RPH 28178, issued to Dennis
26 Michael Zetter

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2. Ordering Dennis Michael Zetter 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: 12/22/10

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

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