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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. 3876

12 **PHILLIP MICHAEL THIELEN**
13 **12780 Ave La Valencia #158**
San Diego, CA 92128

A C C U S A T I O N

14 **Pharmacist License No. RPH 26733**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On July 16, 1970, the Board issued Pharmacist License Number RPH 26733 to
22 Respondent Phillip Michael Thielen. The Pharmacist License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on September 30, 2012, unless
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code unless otherwise indicated.

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7. Section 4022 of the Code states:

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

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

(b) Any device that bears the statement: "Caution: federal law restricts this 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 or order use of the device.

(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.

8. Section 4059, subdivision (a), of the Code states:

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. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

9. 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, or a physician assistant pursuant to Section 3502.1, or 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 physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

10. Section 11170 of the Health and Safety (H&S) Code states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

11. Section 11173, subdivision (a), of the H&S Code states:

(a) 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.

12. Section 11350, subdivision (a) of the H&S Code 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.

DRUGS

13. "Lorazepam" is a dangerous drug per Code section 4022, and is a Schedule IV controlled substance per H&S Code section 11057(d) (16).

14. "Roxicet" is a brand name for oxycodone with acetaminophen, is a dangerous drug per Code section 4022, and is a Schedule II controlled substance per H&S Code section 11055(b)(2).

COST RECOVERY

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

FACTS

16. On December 8, 2008, a medical doctor informed the Board that Respondent had been admitted to Pomerado Hospital on December 6, 2008, with "polysubstance abuse," and a positive urine test for "alcohol, benzo[diazepines], cocaine and opiate." The Board assigned an Inspector to investigate the matter, who obtained a copy of a CURES (Controlled Substance Utilization Review and Evaluation System) report for Respondent. This report indicated that Respondent last received a controlled substance prescription for Roxicet on September 10, 2006, and had no current prescriptions.

17. On May 11, 2009, the Inspector went to University Compounding Pharmacy in San Diego, where Respondent was employed, and observed Respondent in an I.V. (intravenous) drug compounding area. The Inspector told Respondent that the Board had been informed of his December 2008 admission to Pomerado Hospital and positive urine drug screen. When the

1 Inspector asked Respondent if he took drugs from University Compounding Pharmacy, he said
2 yes, that he took Lorazepam and Roxicet from expired drug stock of the pharmacy. Respondent
3 told the Inspector that he had been very depressed since his divorce, and took the drugs. After he
4 was admitted to Pomerado Hospital, he was diagnosed with numerous other health problems.
5 Respondent told the Inspector that he had been in a Sharp Hospital drug rehabilitation program.

6 18. On May 22, 2009, the Inspector received and reviewed Respondent's medical
7 records confirming and detailing his December 6, 2008 admission to Pomerado Hospital. These
8 medical records showed numerous signs and symptoms of Respondent's substance abuse,
9 including a urine drug screen when he was admitted that was positive for benzodiazepines,
10 cocaine, and opiates. Respondent's benzodiazepine ingestion was consistent with the hospital's
11 final diagnosis of "altered mentation" and "polysubstance abuse," and a psychiatric diagnosis of
12 major depression in addition to substance abuse.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Furnishing Dangerous Drug or Controlled Substance to Self Without Prescription)

15 19. Respondent is subject to disciplinary action under sections 4301, subdivisions (h), (j),
16 and (o), and 4059, subdivision (a) of the Code; and section 11170 of the H&S Code, in that
17 Respondent furnished dangerous drugs and controlled substances to himself without a
18 prescription therefor, as detailed in paragraphs 16—18, above.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Obtaining Controlled Substance by Deceit and Subterfuge)

21 20. Respondent is subject to disciplinary action under section 4301, subdivisions (f) and
22 (j) of the Code; and section 11173, subdivision (a) of the H&S Code, in that he obtained
23 controlled substances by deceit or subterfuge, as detailed in paragraphs 16—18, above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Possession of a Controlled Substance without a Prescription)

26 21. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
27 (o), and 4060 of the Code; and section 11350, subdivision (a) of the H&S Code, in that he
28 possessed controlled substances without a prescription, as detailed in paragraphs 16—18, above.

1 **DISCIPLINARY CONSIDERATIONS**

2 22. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about November 17, 1993, in a prior disciplinary action entitled In
4 the Matter of the Accusation Against Phillip Michael Thielen before the Board of Pharmacy, in
5 Case Number 1698, Respondent admitted and was found to have furnished Cylert, Fastin, and
6 generic Fastin to himself without a prescription therefor, between July 1991, and July 1992. As a
7 result of these admissions and findings, Respondent's license was revoked, but the revocation was
8 stayed and Respondent was placed on probation for three years. In addition to the standard terms
9 of probation, Respondent was suspended from the practice of pharmacy for 90 days; ordered to
10 participate in and successfully complete the Impaired Pharmacists Program; required to practice
11 only under the supervision of a pharmacist not on probation; and to pay the Board \$1,000 in costs,
12 which he paid. That decision is now final.

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 Number RPH 26733, issued to Phillip
17 Michael Thielen;
18 2. Ordering Phillip Michael Thielen to pay the Board of Pharmacy the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3; and
21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 9/28/11 Virginia Herold
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

SD2010702968