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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. 3971

11 **DEBORAH LYNN SEVILLA**
12 **3895 Old Hwy 53 #2**
13 **Clearlake, CA 95422**

FIRST AMENDED ACCUSATION

14 **Pharmacist License No. RPH 58263**

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 April 21, 2006, the Board of Pharmacy issued Original Pharmacist
21 License Number RPH 58263 to Deborah Lynn Sevilla (Respondent). The License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on December
23 31, 2013, unless renewed.

24 **JURISDICTION**

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

28 4. Section **4011** of the Code provides that the Board shall administer and enforce both

1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
2 Act [Health & Safety Code, § 11000 et seq.].

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

5 **STATUTORY AND REGULATORY PROVISIONS**

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

9 . . .

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

13 . . .

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

19 . . .

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

22 (k) The conviction of more than one misdemeanor or any felony involving the use,
23 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
24 combination of those substances.

25 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
26 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14 . . .

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

19 . . .

20 7. Section **4327** of the Code states:

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

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

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

1 consistent with the public health, safety, or welfare.

2 **CONTROLLED SUBSTANCES**

3 9. Section **4021** of the Code states:

4 “Controlled substance” means any substance listed in Chapter 2 (commencing with Section
5 11053) of Division 10 of the Health and Safety Code.

6 10. Section **4022** of the Code states:

7 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use,
8 except veterinary drugs that are labeled as such, and includes the following:

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

11 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale
12 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
13 in with the designation of the practitioner licensed to use 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
15 prescription or furnished pursuant to Section 4006.

16 11. Section **4060** of the Code states:

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

28 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a

1 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
2 devices.

3 12. California Health and Safety Code section **11170** states:

4 No person shall prescribe, administer, or furnish a controlled substance for himself.

5 13. California Health and Safety Code section **11173** states:

6 (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
7 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
8 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

9 (b) No person shall make a false statement in any prescription, order, report, or record,
10 required by this division.

11 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
12 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
13 veterinarian, registered nurse, physician's assistant, or other authorized person.

14 (d) No person shall affix any false or forged label to a package or receptacle containing
15 controlled substances.

16 14. **Ativan** (lorazepam) is a Schedule IV controlled substance, a benzodiazepine, used as
17 an anxiolytic, hypnotic, and anticonvulsant. It is a dangerous drug within the meaning of Code
18 section 4022.

19 15. **Norco** (hydrocodone/APAP) is a Schedule III controlled substance, an opioid
20 analgesic combination, used for moderate to severe pain. It is a dangerous drug within the
21 meaning of Code section 4022.

22 16. **Soma** (carisoprodol) is a muscle relaxant. It is a dangerous drug within the meaning
23 of Code section 4022.

24 17. **Suboxone** (buprenorphine/naloxone) is a Schedule III controlled substance, used for
25 opioid dependence therapy. It is a dangerous drug within the meaning of Code section 4022.

26 **COST RECOVERY**

27 18. Section **125.3** of the Code provides, in pertinent part, that a Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Criminal Convictions)

5 19. Respondent is subject to disciplinary action under Code section 4301, subsection
6 (l), in that she has been convicted of crimes substantially related to the qualifications, functions,
7 and duties of a licensee. The circumstances are as follows:

- 8 a. On or about May 24, 2010, in Kern County Superior Court Case No. TM077474A,
9 Respondent was convicted of having violated California Vehicle Code section 23152(a)
10 (driving under the influence of alcohol and/or drugs).
11 b. On or about March 7, 2011, in Lake County Superior Court Case No. CR 923723,
12 Respondent was convicted of having violated California Vehicle Code section 23152(a)
13 (driving under the influence of alcohol and/or drugs).
14 c. On or about March 7, 2011, in Lake County Superior Court Case No. CR925423,
15 Respondent was convicted of having violated California Penal Code section 484 (petty
16 theft).

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Convictions Involving Dangerous Drugs or Alcohol)

19 20. Respondent is subject to disciplinary action under Code section 4301, subsection (k),
20 in that she has been convicted of crimes involving the use, consumption or self-administration of
21 dangerous drugs and/or alcoholic beverages, as follows:

- 22 a. On or about May 24, 2010, in Kern County Superior Court Case No. TM077474A,
23 Respondent was convicted of having violated California Vehicle Code section
24 23152(a)(driving under the influence of alcohol and/or drugs).
25 b. On or about March 7, 2011, in Lake County Superior Court Case No. CR 923723,
26 Respondent was convicted of having violated California Vehicle Code section
27 23152(a)(driving under the influence of alcohol and/or drugs).
28 c. On or about March 7, 2011, in Lake County Superior Court Case No. CR925423,

1 Respondent was convicted of having violated California Penal Code section 484 (petty
2 theft). The conduct underlying this conviction was Respondent's theft of drugs, for her
3 own consumption, from her employer while Respondent was employed as a pharmacist.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Dangerous Use of Drugs and/or Alcohol)

6 21. Respondent is subject to disciplinary action under Code section 4301, subsection (h),
7 in that she administered to herself, or used, controlled substances and/or alcoholic beverages to
8 the extent or in a manner as to be dangerous or injurious to herself, to a person holding a license
9 under this chapter, or to any other person or to the public, and/or to the extent that the use
10 impaired the her ability to conduct with safety to the public the practice authorized by her license,
11 as follows:

- 12 a. On or about April 1, 2010, in Kern County, California, Respondent was observed
13 driving a vehicle erratically. A police officer observed that Respondent was extremely
14 confused, lethargic and drowsy, and displayed objective signs of being under the
15 influence of and impaired by alcohol and/or drugs. Respondent stated to the officer that
16 she was on her way home from work at the K-Mart pharmacy. Based on this conduct,
17 on or about May 24, 2010, in Kern County Superior Court Case No. TM077474A,
18 Respondent was convicted of having violated California Vehicle Code section 23152(a)
19 (driving under the influence of alcohol and/or drugs).
- 20 b. On or about September 13, 2010, Respondent was observed driving a vehicle
21 erratically. A police officer observed that Respondent displayed objective signs of
22 being under the influence of and impaired by drugs. Respondent stated to the officer
23 that she was on her way home from her work at a Walmart pharmacy. Police officers
24 found multiple medications in Respondent's vehicle. Based on this conduct, on or
25 about March 7, 2011, in Lake County Superior Court Case No. CR 923723, Respondent
26 was convicted of having violated California Vehicle Code section 23152(a) (driving
27 under the influence of alcohol and/or drugs).
- 28 c. On or about September 15, 2010, in Clearlake, California, Respondent informed a

1 police officer that she was suffering severe withdrawal effects because she was
2 “detoxing” from narcotics.

- 3 d. On or about November 15, 2010, Respondent stated to an investigator for the Board of
4 Pharmacy that she was addicted to pain medications.
- 5 e. On or about January 10, 2012, Respondent stated to a police officer that she is an
6 “addict.” Respondent was pregnant at that time.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 (Acts of Dishonesty)

9 22. Respondent is subject to disciplinary action under section 4301(f), in that she
10 committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption, as follows:

- 11 a. On or about September, 2010, in Clearlake, California, Respondent stole pain
12 medications including, but not limited to, Ativan (lorazepam), Norco
13 (hydrocodone/APAP), Soma (carisoprodol), and Suboxone (buprenorphine/maloxone)
14 from Walmart, where she was employed as a pharmacist. As a result of this conduct, on
15 or about March 7, 2011, in Lake County Superior Court Case No. CR925423,
16 Respondent was convicted of having violated California Penal Code section 484 (petty
17 theft).
- 18 b. On or about January 9, 2012, Respondent falsely and fraudulently posed as a medical
19 assistant at a physician’s office and telephoned in a prescription for Norco and Soma.
20 The prescription was in the name of another individual. On or about January 10, 2012,
21 Respondent and that individual attempted to fill the prescription at a pharmacy in
22 Clearlake, California, with the intent that the individual would provide the unlawfully
23 obtained drugs to Respondent for Respondent’s use. Respondent was arrested.
24 Respondent admitted to the arresting officer that she had fraudulently called in the
25 prescription, utilizing her skills as a licensed pharmacist to do so.

26 **FIFTH CAUSE FOR DISCIPLINE**

27 (Violation of Statutes Regulating Controlled Substances)

28 23. Respondent is subject to disciplinary action under section 4301(j), in that she violated

1 statutes of this state regulating controlled substances and dangerous drugs, as follows:

- 2 a. On or about January 9, 2012, Respondent falsely and fraudulently posed as a medical
3 assistant at a physician's office and telephoned in a prescription for Norco and Soma.
4 The prescription was in the name of another individual. On or about January 10, 2012,
5 Respondent and that individual attempted to fill the prescription at a pharmacy in
6 Clearlake, California, with the intent that the individual would provide the unlawfully
7 obtained drugs to Respondent for Respondent's use. Respondent was arrested.
8 Respondent admitted to the arresting officer that she had fraudulently called in the
9 prescription, utilizing her skills as a licensed pharmacist to do so. Respondent's
10 conduct as described in this paragraph constituted a violation of California Health and
11 Safety Code sections 11170 and 11173.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 (Practicing While Under the Influence of Drugs)

14 24. Respondent is subject to disciplinary action under Code section 4301, subsections (j)
15 and (o), and under Code section 4327, in that she violated state laws regarding controlled
16 substances by selling, dispensing or compounding drugs while under the influence of controlled
17 substances. The circumstances are as follows:

- 18 a. On or about September 13, 2010, in Clearlake, California, Respondent worked as a
19 pharmacist at the Walmart pharmacy while under the influence of controlled substances.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 (Unlawful Possession and use of Drugs)

22 25. Respondent is subject to disciplinary action under section 4301, subsections (h), (j)
23 and (o), in that she violated state statutes regulating possession and use of controlled substances
24 and dangerous drugs and violated state laws governing pharmacy. The circumstances are as
25 follows:

- 26 a. On or about September, 2010, in Clearlake, California, Respondent stole medications
27 including, but not limited to, Lorazepam, Hydrocodone, Clonazepan, Oxycodone,
28 Methadone, Carisoprodol and Subaxone, from Walmart, where she was employed as a

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pharmacist. Respondent then ingested these medications.

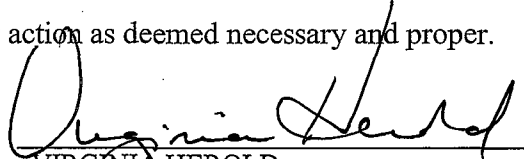
b. Respondent possessed and used these drugs in violation of Code sections 4051 and 4060 and in violation of Health and Safety Code sections 11170, 11350, 11377 and 11550.

PRAYER

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:

- 1. Revoking or suspending Original Pharmacist License Number RPH 58263, issued to Deborah Lynn Sevilla;
- 2. Ordering Deborah Lynn Sevilla 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: 1/19/12


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