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

11 In the Matter of the Interim Suspension Order  
12 Against:

13 **TIM RISHWAIN**  
14 **3909 E. Scottsdale Road**  
**Lodi, CA 95246**  
**Pharmacist License No. RPH 38329**

15 Respondent.

Case No. 4102

OAH No. 2011070550

**A C C U S A T I O N**

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 March 19, 1984, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 38329 to Tim Rishwain (Respondent). The Pharmacist License was in full force  
23 and effect at all times relevant to the charges brought herein and will expire on November 30,  
24 2011, 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 118, subdivision (b), of the Code provides that the  
 2 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of  
 3 jurisdiction to proceed with a disciplinary action during the period within which the license may  
 4 be renewed, restored, reissued or reinstated.

5   **STATUTORY PROVISIONS**

6           5.     Section 4301 of the Code states, in part:

7                    The board shall take action against any holder of a license who is guilty of  
 8 unprofessional conduct or whose license has been procured by fraud or  
 9 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is  
 10 not limited to, any of the following:

11                    ...

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

15                    ...

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

21                    ...

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

24                    ...

25                   (l) The conviction of a crime substantially related to the qualifications,  
 26 functions, and duties of a licensee under this chapter. The record of conviction of a  
 27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
 28 States Code regulating controlled substances or of a violation of the statutes of this  
 state regulating controlled substances or dangerous drugs shall be conclusive  
 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
 be conclusive evidence only of the fact that the conviction occurred. The board may  
 inquire into the circumstances surrounding the commission of the crime, in order to  
 fix the degree of discipline or, in the case of a conviction not involving controlled  
 substances or dangerous drugs, to determine if the conviction is of an offense  
 substantially related to the qualifications, functions, and duties of a licensee under this  
 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
 contendere is deemed to be a conviction within the meaning of this provision. The  
 board may take action when the time for appeal has elapsed, or the judgment of  
 conviction has been affirmed on appeal or when an order granting probation is made  
 suspending the imposition of sentence, irrespective of a subsequent order under  
 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
2 dismissing the accusation, information, or indictment.

3 . . .

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

9 6. Code section 4022 states:

10 "Dangerous drug" or "dangerous device" means any drug or device unsafe  
11 for self-use in humans or animals, and includes the following: (a) Any drug that bears  
12 the legend: "Caution: federal law prohibits dispensing without prescription," "Rx  
13 only," or words of similar import. (b) Any device that bears the statement: "Caution:  
14 federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or  
15 words of similar import, the blank to be filled in with the designation of the  
16 practitioner licensed to use or order use of the device. (c) Any other drug or device  
17 that by federal or state law can be lawfully dispensed only on prescription or  
18 furnished pursuant to Section 4006.

19 7. Health and Safety Code section 11173, subdivision (a) states, in part:

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

24 8. Code section 4360 states:

25 The board shall operate a pharmacists recovery program to rehabilitate  
26 pharmacists and intern pharmacists whose competency may be impaired due to abuse  
27 of alcohol, drug use, or mental illness. The intent of the pharmacists recovery  
28 program is to return these pharmacists and intern pharmacists to the practice of  
pharmacy in a manner that will not endanger the public health and safety.

9. Code section 4362 states:

(a) A pharmacist or intern pharmacist may enter the pharmacists recovery  
program if:

. . .

(2) The pharmacist or intern pharmacist voluntarily elects to enter the  
pharmacists recovery program.

(b) A pharmacist or intern pharmacist who enters the pharmacists recovery  
program pursuant to paragraph (2) of subdivision (a) shall not be subject to discipline  
or other enforcement action by the board solely on his or her entry into the  
pharmacists recovery program or on information obtained from the pharmacist or  
intern pharmacist while participating in the program unless the pharmacist or intern  
pharmacist would pose a threat to the health and safety of the public. However, if the  
board receives information regarding the conduct of the pharmacist or intern

1 pharmacist, that information may serve as a basis for discipline or other enforcement  
2 by the board.

3 10. Code section 4369 states:

4 (a) Any failure to comply with the treatment contract, determination that the  
5 participant is failing to derive benefit from the program, or other requirements of the  
6 pharmacists recovery program may result in the termination of the pharmacist's or  
7 intern pharmacist's participation in the pharmacists recovery program. The name and  
8 license number of a pharmacist or intern pharmacist who is terminated from the  
9 pharmacists recovery program and the basis for the termination shall be reported to  
10 the board.

11 (b) Participation in the pharmacists recovery program shall not be a defense  
12 to any disciplinary action that may be taken by the board.

13 (c) No provision of this article shall preclude the board from commencing  
14 disciplinary action against a licensee who is terminated from the pharmacists  
15 recovery program.

### 16 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS AT ISSUE**

17 11. "Ambien," a brand name for Zolpidem, a depressant, is a Schedule IV controlled  
18 substance as designated my Health and Safety Code section 11057, subdivision (d)(32) and a  
19 dangerous drug within the meaning of Code section 4022, in that its procurement requires a  
20 prescription.

21 12. "Xanax," a brand name for Alprazolam, a depressant, is a Schedule IV controlled  
22 substance as designated my Health and Safety Code section 11057, subdivision (d)(1) and a  
23 dangerous drug within the meaning of Code section 4022, in that its procurement requires a  
24 prescription.

25 13. "Lomotil," a brand name for Diphenoxylate, a narcotic diarrhea medication, is a  
26 Schedule V controlled substance as designated my Health and Safety Code section 11058,  
27 subdivision (c)(4) and a dangerous drug within the meaning of Code section 4022, in that its  
28 procurement requires a prescription.

1 "Phentermine," a stimulant diet drug, is a Schedule IV controlled substance as  
2 designated my Health and Safety Code section 11057, subdivision (f)(4) and a dangerous drug  
3 within the meaning of Code section 4022, in that its procurement requires a prescription.

4 "Methamphetamine" is a Schedule II controlled substance as designated by  
5 Health and Safety Code section 11055, subdivision (d)(2).



1 Respondent stole the tablets from Rite Aid Pharmacy 6000, Lodi, Ca, the pharmacy at  
2 which he was employed since 1997 and for which he was the Pharmacist-in-Charge (PIC).  
3 Respondent was terminated shortly after Rite Aid discovered his thefts. Respondent admitted to  
4 the theft and that he stole the tablets for personal use.

5 Respondent was arrested for the above offenses on November 16, 2010, and on January 27,  
6 2011 was convicted of violating Penal Code section 503 (embezzlement), a misdemeanor.  
7 Respondent was placed on three years of probation, ordered to pay restitution to Rite Aid, and to  
8 perform 120 hours of community service.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dishonest Acts)**

11 22. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
12 that Respondent committed dishonest acts when he stole prescription tablets from his employer,  
13 Rite Aid Pharmacy, as more fully set forth in paragraph 21, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Self Administration of Dangerous Drugs and Controlled Substances)**

16 23. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
17 that Respondent self administered dangerous drugs and controlled substances, as further set forth  
18 in paragraph 21, above, and paragraph 26, below.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unlawful Use/Possession of Dangerous Drugs and Controlled Substances)**

21 24. Respondent is subject to disciplinary action under section 4301, subdivision (j), in  
22 that Respondent unlawfully used/possessed dangerous drugs and controlled substances, in  
23 violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions  
24 Code section 4022, as more fully set forth in paragraphs 21 and 23, above, and paragraph 26,  
25 below.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Pharmacy Laws)**

3 25. Respondent is subject to disciplinary action under section 4301, subsection (o) in that  
4 Respondent violated the laws and regulations regulating pharmacists, as more fully set forth in  
5 paragraph 21-24, above and paragraph 26, below.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Unsuccessful Completion of Diversion Program)**

8 26. Respondent is subject to disciplinary action under section 4362, subdivision (b) and  
9 section 4369, subdivision (c), in that Respondent was terminated from the Pharmacists Diversion  
10 Program and admitted to staff that he had previously been using methamphetamines. The  
11 circumstances are as follows:

12 Respondent entered the California State Board of Pharmacy, Pharmacists Diversion  
13 Program through Maximus CA Diversion Program, on or about March 1, 2011, subsequent to his  
14 criminal conviction on January 27, 2011. On March 17, 2011, Respondent tested positive for  
15 amphetamine and methamphetamine pursuant to a hair follicle test. Respondent admitted to  
16 Diversion Program personnel that he was using methamphetamines (a stimulant) periodically,  
17 two to three times per month for the last six months just prior to entering Maximus. On or about  
18 June 11, 2011, Respondent requested withdrawal from the diversion program and stopped all  
19 further contact with the program. On June 15, 2011, the diversion program terminated  
20 Respondent from the program and classified him a public risk.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacist License Number RPH 38329, issued to Tim  
25 Rishwain

26 //

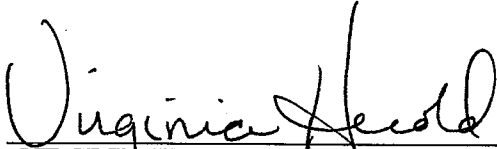
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- 2. Ordering Tim Rishwain to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 8/31/11



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

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