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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. 4116

11 **DENYS JOSEPH MICHAUD**
12 **3811 Briarwood Street**
13 **Napa, CA 94558**

A C C U S A T I O N

14 **Pharmacist License No. RPH 26275**

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 August 5, 1969, the Board of Pharmacy issued Pharmacist License
21 Number RPH 26275 to Denys Joseph Michaud (Respondent). The Pharmacist License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on August 31,
23 2012, unless renewed.

24
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 (Code) unless otherwise indicated.

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

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

7 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
8 revoke a license when it finds that the licensee has been convicted of a crime substantially related
9 to the qualifications, functions or duties of the license.

10 9. California Code of Regulations, title 16, section 1770, states:

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

17 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
18 drug or dangerous device except upon the prescription of an authorized prescriber.

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

21 12. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,
22 dispense or compound any drug while under the influence of a dangerous drug or alcohol.

23 13. Health and Safety Code section 11170 provides that no person shall prescribe,
24 administer, or furnish a controlled substance for himself or herself.

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

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

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

8 COST RECOVERY

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

12 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13 18. Section 4021 of the Code states:

14 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
15 11053) of Division 10 of the Health and Safety Code.”

16 19. Section 4022 of the Code states, in pertinent part:

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

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

21 ...

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

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

FACTUAL BACKGROUND

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2 21. From an unknown start date until on or about November 3, 2010, Respondent was
3 employed as a staff pharmacist at a Raley's Pharmacy in Napa, CA (# 319; PHY 41724), where
4 by virtue of his licensure he had access to controlled substances and dangerous drugs.

5 22. In the period prior to and/or including November 2010, Respondent used this access
6 to divert/steal controlled substances and dangerous drugs for his own use, including **Norco** and/or
7 generic **Hydrocodone with APAP 10/325** (the **Norco** generic equivalent) products.

8 23. The exact number of instances of diversion/theft by Respondent, and the full quantity
9 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but
10 investigations by Raley's, police, and Board Inspector(s) revealed/reported the following.

11 a. In or about May 2010, discrepancies discovered during inventories and audits
12 of the pharmacy's controlled substance inventory, particularly its **Hydrocodone with APAP**
13 **10/325** (generic **Norco**) supplies, led to suspicions that Respondent might be the cause because
14 the counts were off on a number of occasions after he worked a shift;

15 b. An audit of the controlled substance inventory for the pharmacy showed that in
16 the period between May 5, 2010 and October 16, 2010, the pharmacy was short six hundred and
17 sixty-seven (667) tablets of **Norco** and/or **Hydrocodone with APAP 10/325** (generic **Norco**);

18 c. On or about October 27, 2010, diversion was confirmed when a hard count of
19 the **Hydrocodone with APAP 10/325** inventory was performed on succeeding days, and there
20 were tablets missing without intervening prescriptions being filled to explain the missing tablets;

21 d. On or about October 20, October 22, October 25, and November 3, 2010, video
22 surveillance of Respondent showed him behaving suspiciously and appearing to place tablets of
23 **Norco** and/or **Hydrocodone with APAP 10/325** in his pocket(s) and/or in his mouth;

24 e. On or about November 3, 2010, Respondent admitted to taking generic **Norco**
25 pills (**Hydrocodone with APAP 10/325**) from the pharmacy, and to consuming them throughout
26 the day while he was on duty in the pharmacy (at a rate of 2-8 pills a day). He admitted to having
27 taken them from the pharmacy for "at least" the last 30-45 days. Respondent agreed to reimburse
28 Raley's the value of six hundred and ninety-five (695) tablets of generic **Norco** (\$854.85).

1 FIRST CAUSE FOR DISCIPLINE

2 (Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 24. Respondent is subject to discipline under section 4301(f) of the Code in that
4 Respondent, as described in paragraphs 21 to 23 above, committed one or more acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

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

8 25. Respondent is subject to discipline under section 4301(h) of the Code and/or Health
9 and Safety Code section 11170, in that Respondent, as described in paragraphs 21 to 23 above,
10 administered one or more controlled substances to himself.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substance(s))

13 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
14 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
15 in paragraphs 21 to 23 above, furnished to himself or another without a valid prescription, and/or
16 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
21 in paragraphs 21 to 23 above, possessed, conspired to possess, and/or assisted in or abetted
22 possession of, a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Working While Under the Influence)

25 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
26 and/or section 4327 of the Code, in that Respondent, as described in paragraphs 21 to 23 above,
27 was under the influence of controlled substances while selling or dispensing drugs.

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