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

12 In the Matter of the Accusation Against:

Case No. 4155

13 **BRIAN ELLIOT JOHNSON**
2521 Hilltop Drive, #309
14 Redding, California 96002

A C C U S A T I O N

15 Pharmacist License No. RPH 51715

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 28, 2000, the Board of Pharmacy issued Pharmacist License
24 Number RPH 51715 to Brian Elliot Johnson (Respondent). The Pharmacist License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2012, unless renewed.

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1 **JURISDICTION**

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

5 **STATUTORY AND REGULATORY PROVISIONS**

6 4. Section 480(a)(3)(A) provides in pertinent part the Board may deny a license to
7 anyone who performs an act or acts which if done by a licentiate would be grounds for suspension
8 or revocation of the license.

9 5. Section 4022 provides:

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

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

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

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

24 6. Section 4060 provides:

25 No person shall possess any controlled substance, except that
26 furnished to a person upon the prescription of a physician, dentist,
27 podiatrist, optometrist, veterinarian, or naturopathic doctor
28 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, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to
Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2.
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.

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

3 7. Section 4300 provides in relevant part:

4 “(a) Every license issued may be suspended or revoked.”

5 8. Section 4301 provides in relevant part:

6 “The board shall take action against any holder of a license who is
7 guilty of unprofessional conduct. Unprofessional conduct shall
include, but not be limited to, any of the following:

8 (f) The commission of any act involving moral turpitude, dishonesty,
9 fraud, deceit, or corruption, whether the act is committed in the course of
relations as a licensee or otherwise, and whether the act is a felony or
10 misdemeanor.

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

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

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

21 9. Section 4327 provides in relevant part:

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

24 10. Section 4301 provides in relevant part:

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

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

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

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

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

13 CONTROLLED SUBSTANCES

14 11. "Dilaudid" is a brand of hydromorphone and is a Schedule II controlled substance as
15 designated by Health and Safety Code section 11055 (b)(1)(K). This drug is classified as a
16 narcotic pain medication.

17 12. "Oxycontin" is a brand of Oxycodone and is designated a Schedule II substance by
18 Health and Safety Code section 11055(b)(1)(M). This drug is classified as a narcotic pain
19 medication.

20 13. "Morphine" is designated a Schedule II substance by Health and Safety Code
21 section 11055(b)(1)(L). This drug is classified as a narcotic pain medication.

22 14. "Fentanyl" is designated a Schedule II substance by Health and Safety Code
23 section 11055(c)(8). This drug is classified as a narcotic pain medication.

24 15. "Ritalin" and "Methylin" are brands of methylphenidate and are designated a
25 Schedule II substance by Health and Safety Code section 11055(d)(6). This drug is classified as
26 a stimulant.

27 16. "Demerol" is designated a Schedule II substance by Health and Safety Code
28 section 11055(b)(29). This drug is a narcotic pain medication.

1 22. To date, documented diversion of drugs by Respondent includes the following:
2 Demerol 18,000 milligrams July 21, 2010 to September 17, 2010
3 Morphine 6,300 milligrams March 5, 2010 to September 19, 2010
4 Hydromorphone 500 milligrams September 2, 2010
5 Methylphenidate 440 milligrams August 21, 2010 to September 15, 2010

6 **FIRST CAUSE FOR DISCIPLINE**
7 (Unprofessional Conduct-Corrupt Acts)

8 23. Respondent's license is subject to disciplinary action pursuant to section 4301 (f)
9 for corrupt acts by diverting and self-administering dangerous drugs as that term is defined in
10 section 4022. The circumstances are as follows:

11 24. Paragraphs 19 through 22 are incorporated herein as though set forth at length.
12 While employed as a pharmacist and while using his pharmacist license at St. Joseph's Hospital,
13 Respondent diverted and self-administered dangerous drugs without a lawful prescription. In
14 performing the acts alleged herein, Respondent committed deceit, fraud and corrupt acts within
15 the meaning of section 4301(f)

16 **SECOND CAUSE FOR DISCIPLINE**
17 (Unprofessional Conduct-Unlawful Possession)

18 25. Respondent's license is subject to disciplinary action pursuant to sections 4301(j)
19 and (o) on grounds that Respondent unlawfully possessed dangerous drugs without a prescription.
20 The circumstances are as follows:

21 26. Paragraphs 19 and 22 are incorporated herein as though set forth at length. From
22 February 2010 through September 2010, Respondent diverted and possessed dangerous drugs
23 from St. Joseph's Hospital while employed as a pharmacist and utilizing his pharmacist license.
24 Respondent did not have a lawful prescription or reason to possess the diverted drugs in violation
25 of Health and Safety Code section 11350 and 11377(a). Respondent's possession of the drugs in
26 this manner was violation of the laws of California and the United States of America.

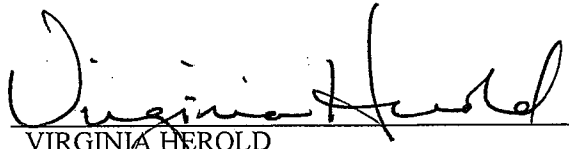
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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/13/12



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