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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 Accusation Against:

Case No. 4192

12 **MICHAEL RONALD KISTER**  
13 **aka MICHAEL R. KISTER**  
2836 Robinwood Ave.  
14 Clovis, CA 93611-3422

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

15 Pharmacist License No. RPH 30052

16 Respondent.

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19  
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about December 29, 1975, the Board issued Pharmacist License No. RPH  
25 30052 to Michael Ronald Kister, also known as Michael R. Kister, ("Respondent"). The  
26 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
27 and will expire on January 31, 2015, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states that every license issued by the Board may be  
6 suspended or revoked.

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of  
10 law, the placement of a license on a retired status, or the voluntary surrender  
11 of a license by a licensee shall not deprive the board of jurisdiction to  
12 commence or proceed with any investigation of, or action or disciplinary  
13 proceeding against, the licensee or to render a decision suspending or  
14 revoking the license.

13 **STATUTORY PROVISIONS**

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

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

19 ...

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

24 ...

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

31 ...

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

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

3 (l) The conviction of a crime substantially related to the qualifications,  
4 functions, and duties of a licensee under this chapter. The record of con-  
5 viction of a violation of Chapter 13 (commencing with Section 801) of Title  
6 21 of the United States Code regulating controlled substances or of a  
7 violation of the statutes of this state regulating controlled substances or  
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In  
9 all other cases, the record of conviction shall be conclusive evidence only of  
10 the fact that the conviction occurred. The board may inquire into the  
11 circumstances surrounding the commission of the crime, in order to fix the  
12 degree of discipline or, in the case of a conviction not involving controlled  
13 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 guilty and to enter a plea  
of not guilty, or setting aside the verdict of guilty, or dismissing the  
accusation, information, or indictment.

14 ...  
15 (o) Violating or attempting to violate, directly or indirectly, or assisting  
16 in or abetting the violation of or conspiring to violate any provision or term  
17 of this chapter or of the applicable federal and state laws and regulations  
governing pharmacy, including regulations established by the board or by  
any other state or federal regulatory agency.

18 7. Code section 4022 states:

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

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

23 (b) Any device that bears the statement: "Caution: federal law restricts  
24 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.

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

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1 8. Code section 4060 states, in pertinent part:

2 No person shall possess any controlled substance, except that  
3 furnished to a person upon the prescription of a physician, dentist, podiatrist,  
4 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.,  
5 or furnished pursuant to a drug order issued by a certified nurse-midwife  
6 pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1,  
7 a physician assistant pursuant to Section 3502.1, a naturopathic doctor  
8 pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1  
9 or 4052.2. . . .

10 9. Health and Safety Code section 11350, subdivision (a), provides, in pertinent part, it  
11 is unlawful to possess Schedule II controlled substances as designated in Health and Safety Code  
12 section 11055, subdivision (b), or any controlled substances designated as Schedule III, IV, or V  
13 which are narcotic drugs, unless upon the written prescription of a physician, dentist, podiatrist,  
14 or veterinarian licensed to practice in this state.

15 10. **DRUGS**

16 <b>Brand Name</b>	17 <b>Generic Name</b>	18 <b>Dangerous Drug (BP Code §4022)</b>	19 <b>Controlled Substance (H&amp;S Code)</b>	20 <b>Indications For Use</b>
21 Vicodin, Norco	Hydrocodone / Acetaminophen	Yes	Schedule III – Health & Safety Code sec. 11056(e)(4)	Pain
22 Dilaudid	Hydromorphone	Yes	Schedule II – Health & Safety Code sec. 11055(b)(1)(J)	Pain
23 Alprazolam	Alprazolam	Yes	Schedule IV – Health& Safety Code sec. 11057(d)(1)	Nerves
24 Lorazepam	Lorazepam		Schedule IV – Health & Safety Code sec. 11057(d)(16)	Nerves
25 Codeine	Codeine	Yes	Schedule II – Health & Safety Code sec. 11055(b)(1)(G)	Pain
26 Ultram	Tramadol	Yes	No	Pain

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1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of Crimes)**

8 12. Respondent's license is subject to disciplinary action under Code section 4301,  
9 subdivision (I), in that Respondent has been convicted of crimes substantially relating to the  
10 qualifications, functions, and duties of a licensed pharmacist as set forth below in paragraphs 13,  
11 and 14, and all of their subparts, incorporated by reference.

12 13. On or about June 14, 2013, in the case titled *People v. Michael Ronald Kister, aka*  
13 *Michael R. Kister*, Fresno County Superior Court Case No. F12906250, Respondent was con-  
14 victed on his plea of guilty to violating Health and Safety Code section 11350, subdivision (a)  
15 [unlawful possession of a controlled substance], a felony, and plea of nolo contendere to violating  
16 Vehicle Code section 23152, subdivision (b) [unlawful to drive a vehicle with a blood alcohol  
17 level of .08% or more]<sup>1</sup>, a misdemeanor. Respondent admitted prior convictions as to his  
18 Vehicle Code section 23152, subdivision (b), conviction. He also admitted all priors and  
19 enhancements.

20 a. The underlying circumstances are: On or about September 6, 2011, Respondent  
21 drove his vehicle in Fresno, California, while under the influence of drugs, resulting in a solo car  
22 traffic collision. Prior to driving his vehicle, Respondent had ingested numerous medications.  
23 According to the arrest report, at the time of his arrest, Respondent possessed Codeine, two  
24 tablets of Hydromorphone 4mg, five tablets of Hydrocodone 500mg, thirteen tablets of Tramadol,  
25 and two tablets of Lorazepam 2mg, without lawful prescriptions, and three tablets of Caffeine  
26

27 <sup>1</sup> The original charge was violation of Vehicle Code section 23152, subdivision (a)  
28 [driving under the influence of alcohol and/or drugs, or their combined effect].

1 200mg. Respondent's urine sample tested positive for Hydrocodone and Alprazolam, for which  
2 he had no lawful prescriptions.

3 14. On or about October 30, 2007, in the case titled *People v. Michael R. Kister*, Fresno  
4 County Superior Court Case No. M07002083, Respondent was convicted on his plea of nolo  
5 contendere to violating Vehicle Code section 23103, subdivision (a) [reckless driving], and  
6 23103.5 [reckless driving substituted for violation of section 23152], a misdemeanor.

7 a. The underlying circumstances are: On or about July 15, 2007, Respondent  
8 drove his vehicle in Clovis, California, while under the influence of alcohol and/or drugs, or their  
9 combined influence. Respondent tested presumptively positive for Hydrocodone and his blood  
10 alcohol level tested at .07%.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Convictions of Misdemeanors or Felony Involving Use, Consumption, or**  
13 **Self-Administration of Dangerous Drugs, Alcohol, or Combined)**

14 15. Respondent's license is subject to disciplinary action under Code section 4301,  
15 subdivision (k), in that Respondent was convicted of more than one misdemeanor or any felony  
16 involving the use, consumption, or self-administration of any dangerous drug or alcoholic  
17 beverage, or any combination of those substances, as set forth above in paragraphs 12, 13, and 14,  
18 and all of their subparts, incorporated by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Committed Acts of Moral Turpitude, Dishonesty,**  
21 **Fraud, Deceit, or Corruption)**

22 16. Respondent's license is subject to disciplinary action under Code section 4301,  
23 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts of  
24 moral turpitude, dishonesty, fraud, deceit, or corruption. The underlying circumstances are set  
25 forth above in paragraphs 12, 13, and 14, and all of their all of their subparts, incorporated by  
26 reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Self-Administration of Controlled Substance; Used Dangerous Drugs**  
3 **Dangerous or Injurious to Self or Public, and Unable to Practice Safely)**

4 17. Respondent's license is subject to disciplinary action under Code section 4301,  
5 subdivision (h), on the grounds of unprofessional conduct, in that Respondent self-administered  
6 and used controlled substances, dangerous drugs, and/or alcoholic beverages, to the extent or in a  
7 manner as to be dangerous or injurious to himself or the public, or to the extent that the use  
8 impaired his ability to conduct with safety to the public the practice of pharmacy, as set forth  
9 above in paragraphs 12, 13, and 14, and all of their subparts, incorporated by reference.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Violation of Laws Regulating Controlled Substances and/or Dangerous Drugs)**

12 18. Respondent's license is subject to disciplinary action under Code section 4301,  
13 subdivision (j), on the grounds of unprofessional conduct, in that Respondent possessed the  
14 controlled substances Codeine, Hydrocodone, Hydromorphone, Alprazolam, and Lorazepam  
15 without a lawful prescription for each drug, in violation of Code section 4066 and Health and  
16 Safety Code section 11350, subdivision (a), as set forth above in paragraphs 12, 13, and 14, and  
17 all of their subparts, incorporated by reference.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Violated or Attempted to Violate Pharmacy Laws)**

20 19. Respondent's license is subject to disciplinary action under Code section 4301,  
21 subdivision (o), on the grounds of unprofessional conduct, in that Respondent violated or  
22 attempted to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring  
23 to violate any provision or term of pharmacy laws, as set forth in paragraphs 12, 13, 14, 15, 16,  
24 17, and 18, and all of their subparts, above, incorporated by reference.

25 **DISCIPLINARY CONSIDERATIONS**

26 20. In order to determine the degree of discipline, Complainant requests the following to  
27 be considered:  
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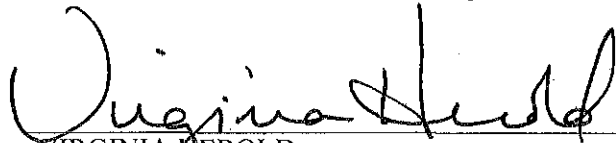
a. In the *Matter of the Accusation Against: Michael Ronald Kister*, Board Case No. 1921, the Board disciplined Respondent, effective July 7, 1998, by revoking his pharmacist license, immediately stayed, and placing him on probation for the period of five years subject to certain terms and conditions, including his mandatory participation in the Pharmacist Recovery Program, random fluid testing, and abstain from drug use. The license was fully reinstated on or about July 7, 2003.

**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 Pharmacist License No. RPH 30052 issued to Michael Ronald Kister, also known as Michael R. Kister;
2. Ordering Michael Ronald Kister, also known as Michael R. Kister, 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

2/19/14



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

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