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

12 In the Matter of the Accusation Against:

Case No. 4256

13 **ASHLEY HUYEN DEVINE**
14 **6 Delphinium Street**
Ladera Ranch, CA 92694

A C C U S A T I O N

15 **Pharmacist License No. RPH 53072**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 25, 2001, the Board of Pharmacy issued PharmacistAA
24 License Number RPH 53072 to Ashley Huyen Devine (Respondent). The Pharmacist License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 May 31, 2013, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued,
8 or reinstated.

9 5. Section 4300, subdivision (a), of the Code provides that every license issued by the
10 Board may be suspended or revoked.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 492 of the Code states:

20 Notwithstanding any other provision of law, successful completion of any
21 diversion program under the Penal Code, or successful completion of an alcohol
22 and drug problem assessment program under Article 5 (commencing with Section
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
24 any agency established under Division 2 (commencing with Section 500) of this
25 code, or any initiative act referred to in that division, from taking disciplinary
26 action against a licensee or from denying a license for professional misconduct,
27 notwithstanding that evidence of that misconduct may be recorded in a record
28 pertaining to an arrest. This section shall not be construed to apply to any drug
diversion program operated by any agency established under Division 2
(commencing with Section 500) of this code, or any initiative act referred to in
that division.

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1 8. Section 4060 of the Code states:

2 No person shall possess any controlled substance, except that furnished to
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
7 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
8 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
9 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
10 This section shall not apply to the possession of any controlled substance by a
11 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
12 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
13 practitioner, or physician assistant, when in stock in containers correctly labeled
14 with the name and address of the supplier or producer.

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

18 9. Section 4301 of the Code states:

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

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

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

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

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37 10. Health & Safety Code (HSC) section 11350 states:

38 a) Except as otherwise provided in this division, every person who
39 possesses (1) any controlled substance specified in subdivision (b) or (c), or
40 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),

1 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
2 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
3 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
4 unless upon the written prescription of a physician, dentist, podiatrist, or
5 veterinarian licensed to practice in this state, shall be punished by imprisonment
6 pursuant to subdivision (h) of Section 1170 of the Penal Code.

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8 **REGULATORY PROVISIONS**

9 11. California Code of Regulations, title 16, section 1769, states:

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11 (b) When considering the suspension or revocation of a facility or a
12 personal license on the ground that the licensee or the registrant has been
13 convicted of a crime, the board, in evaluating the rehabilitation of such person and
14 his present eligibility for a license will consider the following criteria:

15 (1) Nature and severity of the act(s) or offense(s).

16 (2) Total criminal record.

17 (3) The time that has elapsed since commission of the act(s) or
18 offense(s).

19 (4) Whether the licensee has complied with all terms of parole,
20 probation, restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

22 **COST RECOVERY**

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

27 **DRUG**

28 13. Hydrocodone/Ibuprofen; commonly known as Vicoprofen 7.5/200 mg, contains a
Schedule III controlled substance as designated by Health and Safety Code section 11056,
subdivision (e)(4).

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,
3 Fraud, Deceit, and Corruption)

4 14. Respondent is subject to disciplinary action under Code section 4301, subdivision
5 (f), in that during the period of January 16 to March, 13, 2011, Respondent knowingly,
6 voluntarily, and repeatedly obtained hundreds of tablets of hydrocodone/ibuprofen 7.5/200 mg, a
7 controlled substance, by fraud, deceit, or misrepresentation. The circumstances are as follows:

8 a. At a Kaiser Permanente pharmacy in Santa Ana, California where
9 Respondent was employed as a pharmacist, on or about November 18, 2010, the Audit and
10 Compliance Department required the pharmacist-in-charge to perform daily counts on
11 hydrocodone/ibuprofen 7.5/200 mg tablets. On January 13, 2011, the pharmacist-in-charge noted
12 a loss of 122 tablets without being able to identify the person responsible for the loss. Covert
13 cameras were installed that evening. On January 21, 2011, another 56 tablets were missing. Upon
14 review of the surveillance tapes, Respondent was identified as the suspect responsible for the
15 loss. On February 3, 2011, six tablets were lost. On February 18, 2011, the pharmacist-in-charge
16 sent a notification to the Board reporting the losses. On February 28, 2011, 91 tablets and on
17 March 14, 2011, 17 tablets were missing. At that point, the pharmacy's investigative unit was
18 certain that Respondent was the one responsible for the losses. On March 16, 2011, the
19 pharmacist-in-charge, sent to the Board an investigation report detailing an audit from November
20 18, 2010 to March 14, 2011 showing a variance of 292 tablets of hydrocodone/ibuprofen 7.5/200
21 mg.

22 b. On March 21, 2011, Respondent admitted to the pharmacy's investigator
23 and to a union representative that she was the person in the video. Respondent resigned as
24 pharmacist-per-diem during the interview that day. On March 24 and March 28, 2011, the Board
25 received copies of surveillance tapes, which showed Respondent's activities around the shelf
26 areas where the hydrocodone/ibuprofen tablets were stored. In all instances, Respondent
27 removed one or two medication containers and later returned them to the shelf. On one occasion,

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1 Respondent hid a container underneath a prescription label. On July 21, 2011, the investigator
2 referred the matter to the Santa Ana Police Department.

3 c. As a result of the theft of drugs from the pharmacy, a criminal action was
4 filed against Respondent. On or about January 25, 2012, in a criminal proceeding entitled *The*
5 *People of the State of California vs. Ashley Devine, aka Ashley Huyen Devine, aka, Ashley H.*
6 *Devine, aka Ashley Dang*, in Orange County Superior Court, Central Justice Center, Case
7 Number 11CF2223, Respondent pled guilty to violating HSC section 11350, subdivision (a),
8 possession of a controlled substance, a felony, and deferred entry of judgment was granted under
9 PC 1000. Charges for violation of Penal Code (PC) section 484, subdivision (a) - 488 - 508,
10 embezzlement by clerk, agent, or servant, and Code section 4060, possession of a controlled
11 substance without a prescription, felonies, were dismissed pursuant to a plea bargain.

12 d. As a result of her guilty plea, on or about January 25, 2012, Respondent
13 was required to enroll in and complete an 18-month diversion program, perform 30 hours of
14 community service with the OneOC Court Referral Program, and pay fines, fees, and restitution.
15 Respondent was also required to return to court on July 24, 2013 pursuant to PC 1000.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of Drug Laws)**

18 15. Respondent is subject to disciplinary action under Code section 4301, subdivision
19 (j), in that Respondent violated Health & Safety Code section 11350 subdivision (a), regulating
20 controlled substances, as detailed in paragraph 14, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

23 16. Respondent is subject to disciplinary action under Code section 4301, subdivision
24 (o), in that Respondent possessed hydrocodone/ibuprofen without a prescription in violation of
25 Code section 4060, as detailed in paragraph 14, above, in violation of pharmacy law.

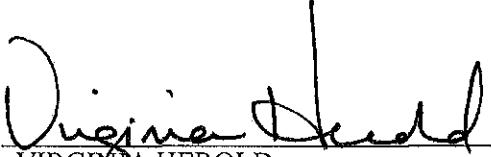
26 **PRAYER**

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

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1. Revoking or suspending Pharmacist License Number RPH 53072, issued to Ashley Huyen Devine;
2. Ordering Ashley Huyen Devine 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: 10/25/12



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

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