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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. 4312

12 **DEAN STANLEY WESTPHALEN**  
13 **873 47th Avenue**  
**San Francisco, California 94121**

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

14 **Pharmacist License No. RPH 41307**

15 Respondent.

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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 September 26, 1987, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 41307 to Dean Stanley Westphalen (Respondent). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought in this Accusation and will expire  
24 on July 31, 2013, 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 (Code) unless otherwise indicated.



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8. Code section 4060 states, in part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. 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.

9. Code section 4300 states, in part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

10. Code section 4301 states, in pertinent part:

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

...

(f) The commission of any act involving moral turpitude, 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.



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**COST RECOVERY**

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

**FACTUAL STATEMENT**

16. For an unknown period, Rite Aid #5999 (Rite Aid) in Angel's Camp, California, employed Respondent as a pharmacist. From on or about September 8, 2010 through April 1, 2011, Respondent was the Pharmacist in Charge at Rite Aid.

17. In or about January through March 2011, Rite Aid employees conducted a drug audit and found a loss of approximately 17 types of controlled substances.

18. On or about March 31, 2011, based upon the results of the drug audit, above, Rite Aid employees conducted a surveillance operation of Respondent. The employees discovered that 100 tablets of hydrocodone 10/325 mg were missing from the pharmacy after Respondent took a lunch break. One employee observed Respondent place two cardboard boxes in his car. The employees found approximately 423 dangerous drugs and 172 controlled substances in unlabeled prescription bottles in Respondent's car.

19. Respondent admitted to stealing furosemide, hydrocodone, loratidine (an over the counter antihistamine), and potassium from the pharmacy.

20. On or about March 31, 2011, the Angel's Camp police department arrested Respondent for violating Health and Safety Code section 11350 (possession of controlled substances) and Penal Code section 459 (burglary) and 487 (grand theft). The arresting officer found the following drugs in Respondent's car: 50 tablets of alprazolam .5 mg, 1 tablet Avinza 60 mg, 5 tablets azithromycin 250 mg, 1 tablet Cialis 10 mg, 17 tablets Cialis 20 mg, 9 tablets

1 Clarinex 5 mg, 5 tablets Clarinex D 12 hour, 55 tablets cyclobenzaprine 10 mg, 9 tablets  
2 dicloxacillin 500 mg, 57 tablets, Dilaudid 4 mg, 1 tablet fluconazole 100 mg, 1 tablet fluconazole  
3 200 mg, 19 tablets furosemide 80 mg, 3 tablets furosemide 40 mg, 13 tablets furosemide 20 mg, 8  
4 tablets hydrocodone with acetaminophen 10/325 mg, 45 tablets hydroxyzine 25 mg, 33 tablets  
5 Klor-Con 8 mEq, 13 Levaquin 500 mg, 48 tablets Levitra 20 mg, 19 tablets Lipitor 20 mg, 91  
6 tablets Lipitor 10 mg, 2 tablets Meridia 15 mg, 26 tablets Norvasc 5 mg, 4 tablets Oracea 40 mg,  
7 39 tablets phentermine 37.5 mg, 1 tablet penicillin VK 500 mg, 1 tablet Tylenol #3 325/30 mg, 1  
8 tablet Valacyclovir 1 gm, 2 tablets Viagra 50 mg, 1 tablet Viagra 100 mg, 10 tablets Xenical 120  
9 mg.  
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11 21. On or about February 24, 2012, in a criminal matter entitled *The People of the State*  
12 *of California v. Dean S. Westphalen*, Calaveras County Superior Court Case No. 11F5110,  
13 Respondent was convicted by guilty plea for violating Penal Code section 487, subdivision (a),  
14 (Grand Theft), a felony, and Health and Safety Code section 11375, subdivision (b)(2),  
15 (Possession of a Controlled Substance for Sale), a misdemeanor. The court sentenced  
16 Respondent to serve 60 days in jail and three years of formal probation, complete mental health  
17 and drug treatment counseling, and ordered him to comply with other terms and conditions.  
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19 22. The factual circumstances underlying the 2012 convictions are set forth in paragraphs  
20 16 through 20, above.

### 21 DRUGS

22 23. Alprazolam is the generic name for Xanax. It is a Schedule IV controlled substance  
23 as defined by Health and Safety Code section 11057, subdivision (d), and a dangerous drug  
24 within the meaning of Code section 4022. It is used to treat anxiety.  
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1           24. Avinza is the trade name for morphine sulfate. It is a Schedule II controlled  
2 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L), and a  
3 dangerous drug within the meaning of Code section 4022. It is an analgesic.

4           25. Azithromycin is the generic name for Zithromax. It is a dangerous drug within the  
5 meaning of Code section 4022. It is an antibiotic.

6           26. Cialis is the trade name for tadalafil. It is a dangerous drug within the meaning of  
7 Code section 4022. It is an impotence agent.

8           27. Clarinex is the trade name for desloratidine. It is a dangerous drug within the  
9 meaning of Code section 4022. It is an antihistamine.

10           28. Cyclobenzaprine is the generic name for Flexeril. It is a dangerous drug within the  
11 meaning of Code section 4022. It is a muscle relaxant.

12           29. Dicloxacillin is the generic name for Dynapen. It is a dangerous drug within the  
13 meaning of Code section 4022. It is an antibiotic.

14           30. Dilaudid is the trade name for hydromorphone hydrochloride. It is a Schedule II  
15 controlled substance as defined by Health and Safety Code section 11055, subdivision (b)(1)(J),  
16 and a dangerous drug within the meaning of Code section 4022. It is a narcotic analgesic.

17           31. Fluconazole is the generic name for Diflucan. It is a dangerous drug within the  
18 meaning of Code section 4022. It is an antifungal.

19           32. Furosemide is the generic name for Lasix. It is a dangerous drug within the meaning  
20 of Code section 4022. It is a diuretic.

21           33. Hydrocodone with acetaminophen is the generic name for Vicodin. It is a Schedule  
22 III controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(5),  
23 and a dangerous drug within the meaning of Code section 4022. It is an analgesic.  
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1           34. Hydroxyzine is the generic name for Vistaril. It is a dangerous drug within the  
2 meaning of Code section 4022. It is an antihistamine and a sedative.

3           35. Klor-Con is the trade name for potassium chloride. It is a dangerous drug within the  
4 meaning of Code section 4022.

5           36. Levaquin is the trade name for levofloxacin. It is a dangerous drug within the  
6 meaning of Code section 4022. It is an antibiotic.

7           37. Levitra is the trade name for vardenafil. It is a dangerous drug within the meaning of  
8 Code section 4022. It is an impotence agent.

9           38. Lipitor is a brand name for atorvastatin calcium. It is a dangerous drug a within the  
10 meaning of Code section 4022. It is a statin.

11           39. Meridia is a brand name for sibutramine. It is a Schedule IV controlled substance as  
12 defined by Code of Federal Regulations, title 21, section 1308.14, subdivision (e)(10), and a  
13 dangerous drug a within the meaning of Code section 4022. It is an anorexiant.

14           40. Norvasc is the trade name for amlodipine. It is a dangerous drug a within the  
15 meaning of Code section 4022. It is a calcium channel blocker.

16           41. Oracea is the trade name for doxyxycline. It is a dangerous drug a within the  
17 meaning of Code section 4022. It is an antibiotic.

18           42. Phentermine is the generic name for Adipex. It is a Schedule IV controlled substance  
19 as defined by Health and Safety Code section 11057, subdivision (f)(4), and a dangerous drug  
20 within the meaning of Code section 4022. It is an anorexiant.

21           43. Penicillin VK is a dangerous drug within the meaning of Code section 4022. It is an  
22 antibiotic.  
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1 44. Tylenol #3 is the trade name for acetaminophen with codeine. It is a Schedule III  
2 controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(2), and  
3 a dangerous drug within the meaning of Code section 4022. It is an analgesic.

4 45. Valacyclovir is a dangerous drug within the meaning of Code section 4022. It is an  
5 anti-viral.

6 46. Viagra is the trade name for sildenafil. It is a dangerous drug within the meaning of  
7 Code section 4022. It is an impotence agent.

8 47. Xenical is the trade name for orlistat. It is a dangerous drug within the meaning of  
9 Code section 4022. It is an anorexiant.  
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11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Commission of Acts of Dishonesty)**

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14 48. Respondents' license is subject to discipline for unprofessional conduct under Code  
15 section 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud,  
16 deceit, or corruption in that he stole and diverted numerous controlled substances and dangerous  
17 drugs during his employment with RiteAid, as set forth in paragraphs 16 through 20, above.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Violating State Statutes re: Controlled Substances)**

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21 49. Respondent's license is subject to discipline for unprofessional conduct under Code  
22 section 4301, subdivision (j), for violating state statutes regulating controlled substances and  
23 dangerous drugs, including but not limited to Code section 4059 and Health and Safety Code  
24 sections 11171 and 11173, subdivision (a), and 11350 in that Respondent unlawfully obtained and  
25 possessed controlled substances and dangerous drugs, as set forth in paragraphs 16 through 20,  
26 above.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Substantially Related Convictions)**

50. Respondent's license is subject to discipline for unprofessional conduct under Code sections 490 and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacist, as set forth in paragraphs 21 and 22, above.

**DISCIPLINARY CONSIDERATIONS**

51. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 13, 2011, Respondent entered a Board diversion program. On or about May 10, 2012, the program terminated Respondent and determined that he was a public risk.

52. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 8, 2010, in a prior action, the Board of Pharmacy issued Citation Number CI 2008 40250 for violating Code section 4301, subdivision (f), for unprofessional conduct based upon the September 10, 2007, filing of a criminal complaint for violating Health and Safety Code section 11360, subdivision (a), (Transportation of Marijuana) and an October 18, 2007, conviction for violating Health and Safety Code section 11357, subdivision (c), (Possession of Marijuana). The Citation assessed a fine of \$3,000.00. The Citation is now final and is incorporated by reference as if fully set forth.

53. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 5, 2008, the Director of Health of the State of Nebraska in the disciplinary proceeding was entitled *State of Nebraska vs. Dean S. Westphalen*, Department of Health of the State of Nebraska, Case File No. RP 80-1, issued a decision suspending his pharmacy license for five years, placing his license on probation for an additional five years, and

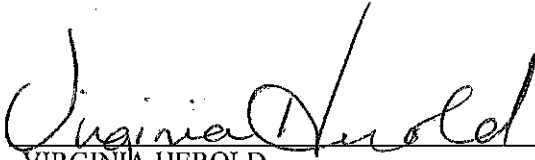
1 requiring him to comply with other terms and conditions. The State of Nebraska based the  
2 license restrictions based upon the following findings: February 18, 1908, felony conviction for  
3 possessing a controlled substance; possession of 37 types of controlled substances with intent to  
4 deliver; intentional delivery of 10 types of controlled substances beyond the authorized scope of  
5 practice as a pharmacist; committing an act of burglary against a pharmacy where he was  
6 employed; possession of 20 types of controlled substances in his car with the intent to deliver;  
7 possession of controlled substances in his residence with the intent to deliver; delivering 3 types  
8 of controlled substances from his car; removing controlled substances from a pharmacy for  
9 personal use; general unprofessional conduct; and unlawful invasion of the field of practice of  
10 professions licensed in the State of Nebraska.  
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12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
14 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

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- 16 1. Revoking or suspending Pharmacist License Number RPH 41307, issued to Dean  
17 Stanley Westphalen;
  - 18 2. Ordering Dean Stanley Westphalen to pay the Board of Pharmacy the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3; and
  - 21 3. Taking such other and further action as deemed necessary and proper.  
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23  
24 DATED: 1/17/13

  
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
*Complainant*

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