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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4391

12 **GARY JOSEPH ZALESKI**
13 **1743 W. Greenview Avenue**
14 **Corona, CA 92880**

A C C U S A T I O N

15 **Pharmacist License No. RPH 35530**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 15, 1980, the Board of Pharmacy issued Pharmacist License
23 Number 35530 to Gary Joseph Zaleski (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on May 31, 2014,
25 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 4300 of the Code states:

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

7

8 5. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 492 of the Code states:

15 Notwithstanding any other provision of law, successful completion of any
16 diversion program under the Penal Code, or successful completion of an alcohol
17 and drug problem assessment program under Article 5 (commencing with section
18 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
19 agency established under Division 2 ([Healing Arts] commencing with Section
20 500) of this code, or any initiative act referred to in that division, from taking
21 disciplinary action against a licensee or from denying a license for professional
22 misconduct, notwithstanding that evidence of that misconduct may be recorded in
23 a record pertaining to an arrest.

24 This section shall not be construed to apply to any drug diversion program
25 operated by any agency established under Division 2 (commencing with Section
26 500) of this code, or any initiative act referred to in that division.

27 7. Section 4301 of the Code states:

28 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:

. . . .

(h) The administering to oneself, of any controlled substance, or 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 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

1 ability of the person to conduct with safety to the public the practice authorized by
2 the license.

3 ...

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

6

7 8. Section 4022 of the Code states

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

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

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

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

18 9. Section 4060 of the Code states:

19 No person shall possess any controlled substance, except that furnished to a
20 person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
22 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
23 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
24 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
25 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
26 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
27 section shall not apply to the possession of any controlled substance by a
28 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.

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

10. Health and Safety Code section 11173 states in pertinent part that no person shall
obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

COSTS

11. Section 125.3 of the Code 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **DRUGS**

4 12. Methamphetamine is a Schedule II controlled substance as designated by Health and
5 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
6 Code section 4022. It is a stimulant drug.

7 **FACTS**

8 13. On June 1, 2012, police were called to Respondent's home due to a reported
9 domestic disturbance. Upon the officers' arrival, Respondent was in the garage. Respondent
10 walked to the driveway and spoke with the officers. When asked if he had any weapons on his
11 person, Respondent stated he had a screwdriver in his pocket. When officers performed a pat
12 down of Respondent, looking for the screwdriver, they found a leather case with
13 methamphetamine and a glass pipe used to smoke methamphetamine. The officers observed that
14 Respondent exhibited several objective symptoms that he was under the influence of a controlled
15 substance. Respondent was arrested for possession of a methamphetamine, possession of drug
16 paraphernalia and for being under the influence of a controlled substance.

17 14. As a result of Respondent's arrest, on or about July 30, 2012, a felony complaint was
18 filed in the matter of the *People vs. Gary Joseph Zaleski*, in Riverside Superior Court, Case
19 Number RIF 1204486, charging Respondent with possession of a controlled substance (Health
20 and Safety Code section 11377(a)); methamphetamine; possession of a device and paraphernalia
21 used for unlawful injecting and smoking a controlled substance (Health and Safety Code section
22 11364.1) and for unlawful use and under the influence of a controlled substance (Health and
23 Safety Code section 11550).

24 15. At a hearing on September 6, 2012, Respondent pled guilty to the felony complaint as
25 charged and a deferred entry of judgment was entered pursuant to Penal Code section 1000.
26 Respondent was referred to Drug Court to complete an 18 month drug diversion program. The
27 matter was set for a follow up sentencing or dismissal hearing on March 6, 2014.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Possession of a Controlled Substance Without a Prescription)

3 16. Respondent is subject to disciplinary action under Code section 4301(j) in
4 conjunction with Code section 4060 in that on or about June 1, 2012, Respondent was arrested
5 and subsequently pled guilty to possession of a controlled substance without a prescription, an act
6 constituting unprofessional conduct. The circumstances are set forth in detail in paragraphs 13
7 through 15 above.

8 SECOND CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct: Self-Administration of a Controlled Substance)

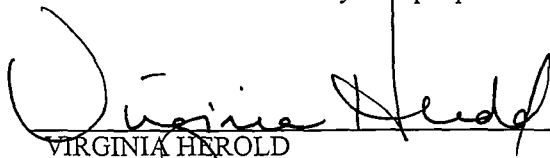
10 17. Respondent is subject to disciplinary action under Code section 4301(h) for self-
11 administration of a controlled substance in that on or about June 1, 2012, Respondent was
12 arrested and subsequently pled guilty to unlawful use and under the influence of a controlled
13 substance, an act constituting unprofessional conduct. The circumstances are set forth in detail in
14 paragraphs 13 through 15 above.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacist License Number 35530, issued to Gary Joseph
19 Zaleski;
- 20 2. Ordering Gary Joseph Zaleski to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: 9/19/13


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