KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
JOSHUA A. ROOM
Supervising Deputy Attorney General
State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1299
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **FREDERICK LAMAR JOHNSON** **P.O. Box 23041** **Oakland, CA 94623** **Pharmacist License No. RPH 61283** Respondent.	Case No. 4552 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 6, 2008, the Board of Pharmacy issued Pharmacist License Number RPH 61283 to Frederick Lamar Johnson (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

JURISDICTION

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

///

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

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

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

9. California Code of Regulations, title 16, section 1770, provides in pertinent part that, for the purpose of denial, suspension, or revocation of a personal or facility license, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.

FACTUAL BACKGROUND

10. On or about November 8, 2011, officer(s) of the Oakland Police Department were dispatched to a residence in Oakland, California to respond to a report of a domestic disturbance made by a female resident. The reporting party also stated that there was a gun in the house.

11. The reporting officer(s) made contact with Respondent and the female victim-witness in the residence. The victim-witness made several statements about Respondent to the officer(s), including that he had allegedly grabbed her by the shoulders and shoved her, that he had hit and punched her in the past, and that Respondent had a handgun in the house.

12. Respondent stated that he and his girlfriend had been arguing, but otherwise offered a different account of events in which his girlfriend threatened him with a knife. When asked by the officer(s) if there was a gun in the house, Respondent said no. He said he used to have a gun, but it was stolen sometime in March 2011. After the victim-witness said she had seen a gun more recently in the house, the officer(s) asked for Respondent's consent to search the residence. He refused, and the officer(s) secured a search warrant. Respondent then directed the officer(s) to a black semiautomatic 9mm pistol, on which the serial number had been obliterated/scratched off.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

13. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about August 22, 2012, in the criminal case *People v. Frederick Lamar Johnson*, Case No. 574667 in Alameda County Superior Court, Respondent was convicted of violating Penal Code section 23920 (Purchase, Sale, Possession, or Transfer of an Unmarked Firearm), a misdemeanor, and Penal Code section 273.5 (Infliction of Corporal Injury on Spouse/Cohabitant), also a misdemeanor, as follows:

a. On or about November 10, 2011, based on the conduct described in the arrest reports relating to paragraphs 10 to 12, Respondent was charged in Case No. 574667 in Alameda County Superior Court with four felonies and three special allegations.

b. On or about August 22, 2012, by motion of the District Attorney a fifth count was added: Penal Code section 273.5 (Infliction of Corporal Injury on Spouse/Cohabitant), a misdemeanor. By the same motion, the original fourth count was amended to a lesser-included or reasonably related offense of Penal Code section 23920 (Purchase, Sale, Possession, or Transfer of an Unmarked Firearm), a misdemeanor. Respondent pleaded no contest to the new count (4) and the added count (5), stipulated to a factual basis for the pleas, and was found guilty of both. The remaining counts were dismissed as part of the plea. Imposition of sentence was suspended in favor of a conditional sentence of thirty six (36) months, on terms and conditions including a domestic violence course, an order to stay away from the victim, and search conditions.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

14. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 10 to 12 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct.

PRAYER

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 61283, issued to Frederick Lamar Johnson (Respondent);

2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 5/9/13

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

SF2013403870
40676214.doc