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

11 In the Matter of the Accusation Against:

Case No. 4599

12 **DONNY JAMES WEINBERGER**
13 **5608 Tares Circle**
14 **Elk Grove, CA 95757**

A C C U S A T I O N

15 Intern Pharmacist Registration No. INT 26871

16 Respondent.

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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 (Board), Department of Consumer Affairs.

22 2. On or about September 29, 2010 the Board issued Intern Pharmacist Registration
23 Number INT 26871 to Donny James Weinberger (Respondent). The Intern Pharmacist
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on September 30, 2014, unless renewed.

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1 **JURISDICTION AND STATUTORY PROVISIONS**

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 unless otherwise indicated.

5 Section 4022 provides:

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

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

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

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

15 4. Section 4060 provides:

16 No person shall possess any controlled substance, except that
17 furnished to a person upon the prescription of a physician, dentist,
18 podiatrist, optometrist, veterinarian, or naturopathic doctor
19 pursuant to Section 3640.7, or furnished pursuant to a drug order
20 issued by a certified nurse-midwife pursuant to Section 2746.51, a
21 nurse practitioner pursuant to Section 2836.1, a physician assistant
22 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section
23 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2.
24 This section shall not apply to the possession of any controlled
25 substance by a manufacturer, wholesaler, pharmacy, pharmacist,
26 physician, podiatrist, dentist, optometrist, veterinarian,
27 naturopathic doctor, certified nurse-midwife, nurse practitioner, or
28 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.

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5. Section 4301 provides in relevant 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.

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

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

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term 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.

(p) Actions or conduct that would have warranted denial of a license.”

CONTROLLED SUBSTANCES

6. “Phernterimine” is designated a Schedule IV substance by Health and Safety Code section 11055(f)(3).

COSTS

7. Section 125.3 of the Code provides, 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 **I.**

4 **FACTUAL ALLEGATIONS**

5 8. In 2010 Respondent began working as a pharmacist intern at a hospital pharmacy.
6 Drugs dispensed by the pharmacy but not administered to patients are returned to the pharmacy in
7 a drug return bin. Between approximately December 2010 and April 2012 Respondent diverted,
8 took, stole, and self-administered Phentermine without a lawful prescription. Respondent
9 obtained the Phentermine by taking the drug from the hospital's drug return bin. Respondent
10 self-administered the drug and was under the influence of the drug while performing the duties,
11 obligations and responsibilities of a pharmacist intern.

12 **II.**

13 **CAUSES FOR DISCIPLINE**

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct-Corrupt Acts)**

16 9. Respondent's intern license is subject to disciplinary action for unprofessional
17 conduct pursuant to section 4301(f) for engaging in acts involving moral turpitude, dishonesty,
18 fraud, deceit and corruption. The circumstances are as follows:

19 10. Paragraph 8 is incorporated herein as though set forth at length. Respondent took and
20 diverted Phentermine from the hospital's drug return bin for personal use without a prescription
21 in violation of 4301(f).

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct-Self-Administration)**

24 11. Respondent's intern license is subject to disciplinary action for unprofessional
25 conduct pursuant to section 4301(h) because Respondent self-administered Phentermine, a
26 controlled substance without a lawful prescription. The circumstances are as follows:

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