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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4696

11 **STEVE JOSEPH SMITH**
12 **1055 West College Ave. #C**
13 **Santa Rosa, CA 95401**

A C C U S A T I O N

14 **Pharmacist License No. RPH 50549**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about September 11, 1998, the Board of Pharmacy issued Pharmacist License
21 Number RPH 50549 to Steve Joseph Smith (Respondent). The Pharmacist License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on September
23 30, 2014, unless renewed.

24 **JURISDICTION**

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

28 4. Section 4011 of the Code provides that the Board shall administer and enforce both

1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
2 Act [Health & Safety Code, § 11000 et seq.].

3 5. Section **4300** of the Code provides that every license issued by the Board may be
4 suspended or revoked.

5 **STATUTORY AND REGULATORY PROVISIONS**

6 6. Section **4301** of the Code provides, in pertinent part:

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

10 ...

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

14 ...

15 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
16 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
17 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
18 to the extent that the use impairs the ability of the person to conduct with safety to the public the
19 practice authorized by the license.

20 ...

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

23 ...

24 7. California Code of Regulations, title 16, section **1770**, states:

25 For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.

3 CONTROLLED SUBSTANCES

4 8. Section 4021 of the Code states:

5 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
6 11053) of Division 10 of the Health and Safety Code.

7 9. Section 4022 of the Code states:

8 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use,
9 except veterinary drugs that are labeled as such, and includes the following:

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

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

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

17 10. Section 4060 of the Code states:

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

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

4 11. California Health and Safety Code section 11170 states:

5 No person shall prescribe, administer, or furnish a controlled substance for himself.

6 12. California Health and Safety Code section 11173 states:

7 (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
8 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
9 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

10 (b) No person shall make a false statement in any prescription, order, report, or record,
11 required by this division.

12 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
13 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
14 veterinarian, registered nurse, physician's assistant, or other authorized person.

15 (d) No person shall affix any false or forged label to a package or receptacle containing
16 controlled substances.

17 13. **Morphine** is a Schedule II controlled substance as designated by Health and Safety
18 Code section 11055(b)(1)(M), and a dangerous drug as designated by Business and Professions
19 Code section 4022.

20 14. **Hydrocodone/Acetaminophen** is a Schedule III controlled substance as designated
21 by Health and Safety Code section 11056(e)(4) and a dangerous drug per Business and
22 Professions Code section 4022.

23 COST RECOVERY

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

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1 **FACTUAL SUMMARY**

2 16. On or about June 27, 2012, Respondent admitted to his business partner that he was
3 an "impaired pharmacist" and was in need of a drug rehabilitation program. On or about August
4 9, 2012, Respondent admitted to a Pharmacy Board investigator that he had a substance abuse, or
5 chemical dependency, problem.

6 17. On or about October 11, 2012, Respondent met with a Pharmacy Board investigator.
7 At that time, Respondent admitted that, during the preceding two-year period, he had stolen
8 unused controlled substances including, but not limited to, hydrocodone, morphine and other
9 opiates, that had been returned to his pharmacy¹ by customers. Respondent stole these items
10 during the course of his duties and relations as a pharmacist.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Acts of Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 18. Respondent is subject to disciplinary action under Code section 4301(f) in that he
14 committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption during the
15 course of relations as a licensee and otherwise, as set forth above in paragraph 16.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Dangerous Use of Drugs)

18 19. Respondent is subject to disciplinary action under Code section 4301(h) in that he
19 administered to himself and used controlled substances and/or dangerous drugs, and used said
20 substances to the extent or in a manner as to be dangerous or injurious to himself and to others,
21 and/or to the extent that such use impaired his ability to conduct with safety to the public the
22 practice authorized by his license, as set forth above in paragraphs 15-16.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Violation of Drug Laws)

25 20. Respondent is subject to disciplinary action under Code section 4301(j) in that he
26 violated statutes of this state regulating controlled substances and dangerous drugs, as set forth

27 _____
28 ¹ Respondent worked at, and was a joint owner of, Dollar Drug in Santa Rosa, California.

1 above in paragraphs 15-16. Respondent's conduct violated California law including, but not
2 limited to, Business and Professions Code section 4060 (unlawful possession of controlled
3 substances) and Health and Safety Code sections 11170 (unlawful administration or furnishing to
4 self), 11173 (unlawfully obtaining controlled substances by fraud, deceit or subterfuge), 11377
5 (unlawful possession of certain controlled substances) and 11350 (unlawful possession of certain
6 controlled substances).

7 **PRAYER**

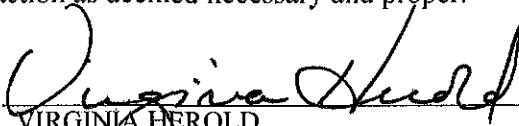
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacist License Number RPH 50549, issued to Steve
11 Joseph Smith;

12 2. Ordering Steve Joseph Smith to pay the Board of Pharmacy the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 4/9/14



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