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

10 In the Matter of the Accusation Against:

Case No. 4756

11 **MICHAEL T. MCKINLEY**
12 **10815 Molony Rd.**
13 **Culver City, CA 90230**
14 **Pharmacist License No. RPH 41071**

A C C U S A T I O N

15 Respondent.

16
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 August 17, 1987, the Board of Pharmacy issued Pharmacist License
22 Number RPH 41071 to Michael T. McKinley ("Respondent"). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on August
24 31, 2015, 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 unless otherwise indicated.

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. An action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under Section

12 1203.4 of the Penal Code. . . ."

13 7. Section 4060 of the Code states:

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

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

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1 8. Section 4301 of the Code states, in pertinent part:

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

5

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

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

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

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19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
27 dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

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9 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violation of or conspiring to violate any provision or term of this chapter or of the applicable
11 federal and state laws and regulations governing pharmacy, including regulations established by
12 the board or by any other state or federal regulatory agency. . . ."

13 9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer,
14 or furnish a controlled substance for himself."

15 10. Health and Safety Code section 11350, subdivision (a) states:

16 "(a) Except as otherwise provided in this division, every person who possesses (1) any
17 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
18 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
19 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
20 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
21 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
22 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
23 Section 1170 of the Penal Code."

24 11. 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/DANGEROUS DRUGS**

4 12. Xanax, the brand name for alprazolam, which is used to treat anxiety, panic disorder,
5 and insomnia, is a Schedule IV controlled substance pursuant to Health and Safety Code section
6 11057, subdivision (d)(1) and is a dangerous drug pursuant to Business and Professions Code
7 section 4022.

8 13. Viagra, the brand name for sildenafil citrate, which is used to treat erectile
9 dysfunction, is a dangerous drug pursuant to Business and Professions Code section 4022.

10 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Conviction of a Substantially Related Crime)**

17 15. Respondent is subject to disciplinary action under Code sections 490 and 4300,
18 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
19 grounds of unprofessional conduct in that Respondent was convicted of a crime substantially
20 related to the qualifications, functions, and duties of a licensed pharmacist which evidences his
21 present and/or potential unfitness to perform the functions of a licensed pharmacist in a manner
22 consistent with the public health, safety, or welfare. The circumstances are as follows:

23 16. On or about September 27, 2013, after pleading *nolo contendere*, Respondent was
24 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
25 [driving a vehicle under the influence of an alcoholic beverage] in the criminal proceeding
26 entitled *The People of the State of California v. Michael Theodore McKinley* (Super. Ct. Los
27 Angeles County, 2013, No. 3WA01070.) The Court sentenced Respondent to thirty six months
28 probation, a nine month first offender alcohol/drug education and counseling program, and

1 ordered him to attend 104 alcoholics anonymous/narcotics anonymous meetings one time per
2 week.

3 17. The circumstances surrounding the conviction are that on or about the early morning
4 hours of February 16, 2013, Respondent struck a parked car while he was driving his vehicle.
5 After officers arrived on the scene, they observed that Respondent had an unsteady gait, watery,
6 bloodshot eyes, and slow, slurred speech. Respondent admitted that he had consumed alcoholic
7 beverages. Respondent provided a breath sample and his blood alcohol content was 0.21% and
8 0.20%.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol)**

11 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
12 on the grounds of unprofessional conduct in that or about February 15 and/or 16, 2013,
13 Respondent consumed alcoholic beverages in a manner dangerous or injurious to himself or the
14 public. Complainant incorporates by reference Paragraph 17 as though fully set forth herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unlawful Possession of a Controlled Substance)**

17 19. Respondent is subject to disciplinary action under Code sections 4060 and 4301,
18 subdivision (o) on the grounds of unprofessional conduct in that on or about September 30, 2011,
19 Respondent admitted in writing that over the past two years, while working at Rite Aid as a
20 pharmacist, he took five 0.5 mg tablets of Xanax for his personal use.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violation of State Statutes Regulating Controlled Substances)**

23 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
24 and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of
25 unprofessional conduct in that on or about September 30, 2011, Respondent admitted in writing
26 that over the past two years, while working at Rite Aid as a pharmacist, he took five 0.5 mg
27 tablets of Xanax for his personal use.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonest Acts)**

3 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
4 on the grounds of unprofessional conduct in that Respondent committed dishonest acts. On or
5 about September 30, 2011, Respondent admitted in writing that over the past two years, while
6 working at Rite Aid as a pharmacist, he took five 0.5 mg tablets of Xanax and eight 100 mg
7 tablets of Viagra for his personal use. He also admitted to taking three packages of gum and three
8 packages of cigarettes without paying for them.

9 **DISCIPLINE CONSIDERATIONS**

10 22. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that on or about April 1, 2008, in a prior action, the Board of Pharmacy
12 issued Citation Number CI 2007 35826 to Respondent in the amount of \$2,000.00 for violating
13 California Code of Regulations, title 16, sections 1712, 1716, and 1717, subdivision (g). That
14 Citation is now final and is incorporated by reference as though fully set forth herein.

15 23. To determine the degree of discipline, if any, to be imposed on Respondent,
16 Complainant alleges that on or about July 28, 2001, in a prior action, case number 1778, the
17 Board of Pharmacy adopted a Stipulation for Settlement in which Respondent received a letter of
18 public reprimand for violating Business and Professions Code section 4350.5 and California Code
19 of Regulations 1707.2. That Stipulation for Settlements is now final and is incorporated by
20 reference as though fully set forth herein.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacist License Number RPH 41071, issued to Michael
25 T. McKinley;

26 2. Ordering Michael T. McKinley to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and

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

DATED: 8/12/14 *Virginia Herold*

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

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