

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
7 Facsimile: (619) 645-2061  
E-mail: Adrian.Contreras@doj.ca.gov  
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4788

13 **DANIEL JOHN OPATZ**  
14 **5451 Burlingame Avenue**  
**Buena Park, CA 90621**

**A C C U S A T I O N**

15 **Pharmacist License No. RPH 37645**

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 April 4, 1983, the Board of Pharmacy issued Pharmacist License Number  
23 RPH 37645 to Daniel John Opatz (Respondent). The Pharmacist License was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless  
25 renewed.

26 ///

27 ///

28 ///

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 unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

7 "(b) The board shall discipline the holder of any license issued by the board, whose default  
8 has been entered or whose case has been heard by the board and found guilty, by any of the  
9 following methods:

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

12 "(3) Suspending his or her right to practice for a period not exceeding one year.

13 "(4) Revoking his or her license.

14 "(5) Taking any other action in relation to disciplining him or her as the board in its  
15 discretion may deem proper.

16 "...

17 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
19 shall have all the powers granted therein. The action shall be final, except that the propriety of  
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
21 Civil Procedure."

22 5. Section 4300.1 of the Code states:

23 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
24 operation of law or by order or decision of the board or a court of law, the placement of a license  
25 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
26 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
27 proceeding against, the licensee or to render a decision suspending or revoking the license."

28 ///

1 **STATUTORY PROVISIONS**

2 6. Section 480 of the Code states:

3 "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
4 one of the following:

5 ". . .

6 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
7 benefit himself or herself or another, or substantially injure another.

8 "[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is  
9 substantially related to the qualifications, functions, or duties of the business or profession for  
10 which application is made.

11 ". . ."

12 7. Section 482 of the Code states:

13 "Each board under the provisions of this code shall develop criteria to evaluate the  
14 rehabilitation of a person when:

15 "(a) Considering the denial of a license by the board under Section 480; or

16 "(b) Considering suspension or revocation of a license under Section 490.

17 "Each board shall take into account all competent evidence of rehabilitation furnished by  
18 the applicant or licensee."

19 8. Section 490 of the Code states:

20 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
21 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
22 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
23 or profession for which the license was issued.

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

1           (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
2 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
5 made suspending the imposition of sentence, irrespective of a subsequent order under the  
6 provisions of Section 1203.4 of the Penal Code.

7           (d) The Legislature hereby finds and declares that the application of this section has been  
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
9 554, and that the holding in that case has placed a significant number of statutes and regulations  
10 in question, resulting in potential harm to the consumers of California from licensees who have  
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
13 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not  
14 constitute a change to, but rather are declaratory of, existing law."

15           9. Section 493 of the Code states:

16           "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
17 the department pursuant to law to deny an application for a license or to suspend or revoke a  
18 license or otherwise take disciplinary action against a person who holds a license, upon the  
19 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
20 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
21 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
22 and the board may inquire into the circumstances surrounding the commission of the crime in  
23 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
24 qualifications, functions, and duties of the licensee in question.

25           "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
26 'registration.'"

27       ///

28       ///

1           10. Section 4301 of the Code states:

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.

9           "(g) Knowingly making or signing any certificate or other document that falsely represents  
10 the existence or nonexistence of a state of facts.

11          ". . .

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

14          ". . .

15          "(l) The conviction of a crime substantially related to the qualifications, functions, and  
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
18 substances or of a violation of the statutes of this state regulating controlled substances or  
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
21 The board may inquire into the circumstances surrounding the commission of the crime, in order  
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
26 of this provision. The board may take action when the time for appeal has elapsed, or the  
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.

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

5 "..."

6 11. Section 4324 of the Code states:

7 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
8 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any  
9 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the  
10 state prison, or by imprisonment in the county jail for not more than one year.

11 "..."

#### 12 REGULATORY PROVISIONS

13 12. California Code of Regulations, title 16, section 1769, states:

14 "..."

15 "(b) When considering the suspension or revocation of a facility or a personal license on the  
16 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
17 the rehabilitation of such person and his present eligibility for a license will consider the  
18 following criteria:

19 "(1) Nature and severity of the act(s) or offense(s).

20 "(2) Total criminal record.

21 "(3) The time that has elapsed since commission of the act(s) or offense(s).

22 "(4) Whether the licensee has complied with all terms of parole, probation, restitution or  
23 any other sanctions lawfully imposed against the licensee.

24 "(5) Evidence, if any, of rehabilitation submitted by the licensee.

25 13. California Code of Regulations, title 16, section 1770 states:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license  
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare.”

#### 4 COSTS

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

#### 11 DRUGS

12 15. Hydrocodone is marketed under numerous trade names, including Vicodin and  
13 Norco. Hydrocodone/APAP is a Schedule III controlled substance pursuant to Health and Safety  
14 Code section 11056, subdivision (e), and is a dangerous drug pursuant to Code section 4022.

#### 15 FIRST CAUSE FOR DISCIPLINE

##### 16 **(July 19, 2012, Criminal Conviction for Forging a Prescription on December 9, 2010)**

17 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
18 (l) of the Code in that he was convicted of a crime substantially related to the qualifications,  
19 functions, and duties of a licensee. The circumstances are as follows:

20 17. On or about July 19, 2012, in a criminal proceeding entitled *People v. Opatz*, in  
21 Orange County Superior Court, case number 12NF0272, Respondent was convicted on his plea of  
22 guilty of violating Code section 4324, subdivision (a), forging a prescription, a misdemeanor.

23 18. As a result of the conviction, Respondent was sentenced to three years informal  
24 probation, and ordered to pay fines and fees and complete thirty days of community service.

25 19. The facts that led to the conviction are that on or about December 9, 2010,  
26 Respondent, while working as a pharmacist at Ride Aid Pharmacy, forged multiple prescriptions  
27 of hydrocodone/APAP for a former coworker of his, Michelle E. Afterwards, he filled the  
28 prescriptions and gave them to Michelle.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

3 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
4 in that Respondent committed forgery, an act of moral turpitude or dishonesty. Complainant re-  
5 alleges and incorporates by reference the allegations set forth above in paragraphs 16-19.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Knowingly Making a Document That**  
8 **Falsely Represents the Existence of a State of Facts)**

9 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (g)  
10 in that Respondent knowingly made a document that falsely represents the existence or  
11 nonexistence of a state of facts. Complainant re-alleges and incorporates by reference the  
12 allegations set forth above in paragraphs 16-19.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Violation of Law Regulating**  
15 **Controlled Substances and Dangerous Drugs)**

16 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)  
17 in that Respondent violated Code section 4324, subdivision (a), a law regulating controlled  
18 substances and dangerous drugs. Complainant re-alleges and incorporates by reference the  
19 allegations set forth above in paragraphs 16-19.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Act Warranting Denial of Licensure)**

22 23. Respondent is subject to disciplinary action under section 4301, subdivision (p), in  
23 that he committed an act that would have warranted denial of a license by forging a prescription,  
24 an act enumerated in Code section 480, subdivision (a)(2), which is cause for denial of a license  
25 to an applicant who committed an act of dishonesty with the intent to substantially benefit  
26 another. Complainant re-alleges and incorporates by reference the allegations set forth above in  
27 paragraphs 16-19.

28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

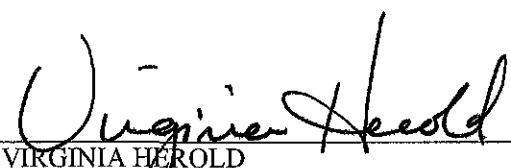
**PRAYER**

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 Number RPH 37645, issued to Daniel John Opatz;
2. Ordering Daniel John Opatz to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

10/3/13



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

SD2013705536  
70744402.doc