

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. 4848

13 **LEON D. MEZENTSEV**
14 **521 Arbor Drive #103**
San Diego, CA 92103

A C C U S A T I O N

15 **Pharmacist License No. RPH 67178**

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 July 12, 2012, the Board of Pharmacy issued Pharmacist License
23 Number RPH 67178 to Leon D. Mezentsev (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on February 28,
25 2014, unless renewed.

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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 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300 of the Code states:

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

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

14 "(1) Suspending judgment.

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

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

17 "(4) Revoking his or her license.

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

20 "...

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

26 6. Section 4300.1 of the Code states:

27 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
28 operation of law or by order or decision of the board or a court of law, the placement of a license

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license."

4 STATUTORY PROVISIONS

5 7. Section 480 of the Code states:

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

8 "...

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

11 "...

12 "[3](B) The board may deny a license pursuant to this subdivision only if the crime or act
13 is substantially related to the qualifications, functions, or duties of the business or profession for
14 which application is made.

15 "...."

16 8. Section 482 of the Code states:

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

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

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

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

23 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
24 revoke a license on the ground that the licensee has been convicted of a crime substantially
25 related to the qualifications, functions, or duties of the business or profession for which the
26 license was issued.

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1 10. Section 493 of the Code states:

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

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

13 11. 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
27 and devices."

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1 12. 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 ". . .

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.

15 ". . .

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.

18 ". . .

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
27 or 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.

8 "...

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

10 "..."

11 13. Section 4022 of the Code states

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

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

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

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

21 **REGULATORY PROVISIONS**

22 14. California Code of Regulations, title 16, section 1769, states:

23 "...

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

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(March 7, 2013, Criminal Convictions for Obtaining a Controlled Substance**
3 **by Fraud or Deceit and Burglary on October 22, 2012)**

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

7 19. On or about March 7, 2013, in a criminal proceeding entitled *People v. Mezentsev*, in
8 San Diego County Superior Court, Case Number CD244123, Respondent was convicted on his
9 plea of guilty of violating Health and Safety Code section 11173, subdivision (a), obtaining the
10 controlled substance hydrocodone by fraud or deceit, a felony; and Penal Code section 459,
11 burglary, a misdemeanor. As a result of a plea agreement, one count of violating Penal Code
12 section 148.9, subdivision (b), false representation of identity upon lawful detention, a
13 misdemeanor, was dismissed.

14 20. As a result of the conviction, on or about April 10, 2013, Respondent was sentenced
15 to three years felony probation and ordered to complete 100 hours of volunteer work and pay
16 fines and fees.

17 21. The facts that led to the conviction are that on or about October 22, 2012, Respondent
18 had a stomach disorder. As a result of the pain Respondent experienced from this disorder, he
19 procured prescription drugs without proper authorization and developed a Hydrocodone/APAP
20 addiction. Respondent tried to pick up a fraudulent prescription for ninety tables of
21 Hydrocodone/APAP in the name of another person at a Rite Aid Pharmacy. Respondent had
22 previously called in to the pharmacy pretending to call on behalf of a licensed Massachusetts
23 medical doctor and using this Massachusetts doctor's prescriber information. In fact, this
24 Massachusetts doctor never authorized this prescription. When Respondent tried to pick up this
25 prescription, he was arrested.

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SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Violation of Laws Regulating Controlled Substances
and Dangerous Drugs)**

22. Respondent is subject to disciplinary action under section 4301, subdivision (j) in that Respondent unlawfully obtained the controlled substance Hydrocodone/APAP in violation of Code section 4060. The circumstances are described in paragraphs 18-21, and are hereby incorporated as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Act of Moral Turpitude, Dishonesty, or Fraud)

23. Respondent is subject to disciplinary action under section 4301, subdivision (f) in that Respondent obtained a controlled substance by fraud or deceit and committed burglary. These are acts of moral turpitude, dishonesty, fraud, or deceit. The circumstances are described in paragraphs 18-21, and are hereby incorporated as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Act Warranting Denial of Licensure)

24. Respondent is subject to disciplinary action under section 4301, subdivision (p) in that he committed an act that would have warranted denial of a license by obtaining a controlled substance by fraud or deceit and committing burglary, acts described in Code section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who has committed an act of dishonesty with the intent to substantially benefit himself. The circumstances are described in paragraphs 18-21, and are hereby incorporated as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Use of a Controlled Substance to an Extent or in a Manner
Dangerous or Injurious to Oneself or Others)**

25. Respondent is subject to disciplinary action under section 4301, subdivision (h) in that Respondent used a controlled substance to an extent or in a manner dangerous or injurious to himself and the public when he consumed the controlled substance Hydrocodone/APAP to satisfy

1 his addiction. The circumstances are described in paragraphs 18-21, and are hereby incorporated
2 as if fully set forth herein.

3 **DISCIPLINE CONSIDERATIONS**

4 26. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that in 2011, in a prior criminal proceeding, Respondent was convicted of
6 violating Vehicle Code section 12500, subdivision (a), driving without a license; and Penal Code
7 section 415, subdivision (2), disturbing the peace. The convictions were the result of a single
8 incident in 2011.

9 **PRAYER**

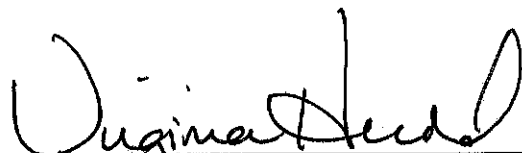
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacist License Number RPH 67178, issued to Leon D.
13 Mezentsev;

14 2. Ordering Leon D. Mezentsev to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and

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

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21 DATED: 12/2/13



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

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