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

11 In the Matter of the Accusation Against:

Case No. 4885

12 **JEFFREY P. SIMONE**
2000 Main Street #136
13 Santa Monica, CA 90405

A C C U S A T I O N

14 **Pharmacist License No. RPH 62894**

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 13, 2009, the Board of Pharmacy issued Pharmacist License
22 Number RPH 62894 to Jeffrey P. Simone ("Respondent"). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on March 31,
24 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.

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4. Section 4300.1 of the Code states:

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

5. Section 4300 of the Code states, in pertinent part:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

STATUTES

6. Code section 490 states, in pertinent part:

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

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties 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. An 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 Section
6 1203.4 of the Penal Code. . . ."

7 7. Section 4060 of the Code states:

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

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

22 8. Section 4301 of the Code states:

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

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

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

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

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

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

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

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

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

19 **REGULATIONS**

20 11. California Code of Regulations, title 16, section 1770, states:

21 "For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered substantially related to the qualifications, functions or duties of a
24 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
25 licensee or registrant to perform the functions authorized by his license or registration in a manner
26 consistent with the public health, safety, or welfare."

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1 **CONTROLLED SUBSTANCES**

2 12. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
3 section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
4 4022.

5 **COST RECOVERY**

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

10 **FIRST CAUSE FOR DISCIPLINE**

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

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

18 (a) On or about October 11, 2013, after pleading *nolo contendere*, Respondent was
19 convicted of one misdemeanor count of violating Penal Code section 503 [embezzlement] in the
20 criminal proceeding entitled *The People of the State of California v. Jeffrey Philip Simone* (Super.
21 Ct. Los Angeles County, 2013, No. 3WA22154.) The Court sentenced Respondent to serve 1 day
22 in jail and placed him on 24 months probation with terms and conditions, including attending 60
23 Alcoholic's Anonymous/Narcotic's Anonymous meetings in the first 90 days of probation,
24 continuous supervised practice pursuant to the California Board of Pharmacy's Manual of
25 Disciplinary Guidelines, and attendance for one year at an outpatient drug treatment program.
26 The circumstances surrounding the conviction are that between approximately July 2011 and May
27 2013, Respondent, who was a pharmacist at CVS, fraudulently obtained 2400 pills of oxycodone
28 by either: (1) creating fraudulent prescriptions or (2) not returning canceled prescriptions to the

1 pharmacy's inventory. Respondent did not pay for approximately 600 of the pills resulting in a
2 \$500.00 loss to CVS.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Drugs)**

5 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
6 on the grounds of unprofessional conduct in that between approximately July 2011 and May 2013,
7 Respondent, who was a pharmacist at CVS, used 2400 pills of fraudulently obtained oxycodone in
8 a manner dangerous or injurious to himself or the public.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unlawful Possession of Controlled Substances)**

11 16. Respondent is subject to disciplinary action under Code sections 4060 and 4301,
12 subdivision (o) on the grounds of unprofessional conduct in that between approximately July
13 2011 and May 2013, Respondent, who was a pharmacist at CVS, violated the Pharmacy Law by
14 unlawfully possessing 2400 pills of oxycodone. Respondent obtained 2400 pills of oxycodone by
15 either: (1) creating fraudulent prescriptions or (2) not returning canceled prescriptions to the
16 pharmacy's inventory.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Violating Drug Statutes)**

19 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
20 and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of
21 unprofessional conduct in that between approximately July 2011 and May 2013, Respondent, who
22 was a pharmacist at CVS, violated California rules regulating controlled substances when he
23 unlawfully possessed and unlawfully administered to himself controlled substances, to wit, 2400
24 oxycodone pills.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Dishonest Acts)**

27 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
28 on the grounds of unprofessional conduct in that Respondent committed dishonest acts.

1 Complainant incorporates by reference Paragraph 14, subparagraph (a), as though fully set forth
2 herein.

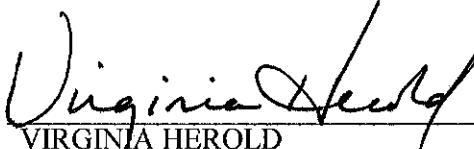
3 PRAYER

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

- 6 1. Revoking or suspending Pharmacist License Number RPH 62894, issued to Jeffrey P.
7 Simone;
8 2. Ordering Jeffrey P. Simone to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and
11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: _____

10/31/13


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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