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

12 In the Matter of the Accusation Against:

Case No. 5064

13 **DONALD RAY WYATT III**

14 P.O. Box 570
Empire, CA 953189-0570

A C C U S A T I O N

15 **Pharmacist License No. RPH 68413**

16 Respondent.
17

18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

22 2. On or about November 5, 2012, the Board issued Pharmacist License Number RPH
23 68413 to Donald Ray Wyatt III ("Respondent"). The Pharmacist License will expire on December
24 31, 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 4300 states, in pertinent part, that every license issued may be suspended
2 or revoked.

3 5. Code section 4300.1 states:

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

9 STATUTORY PROVISIONS

10 **Business and Professions Code**

11 6. Code section 4301 states, in pertinent part:

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

15 ...

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

19 ...

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

25 ...

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

28 ...

1 (D) conviction of a crime substantially related to the qualifications, functions, and duties of a
2 licensee under this chapter.

3 ...

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 the
7 board or by any other state or federal regulatory agency."

8 7. Code section 4324 states, in pertinent part:

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

13 ...

14 8. Code section 490, subdivision (a) states, in pertinent part:

15 A board may suspend or revoke a license on the ground that the licensee has been convicted
16 of a crime that is substantially related to the qualifications, functions, or duties of the business or
17 profession for which the license was issued.

18 9. Code section 4059 states, in pertinent part:

19 No person shall furnish any dangerous drug, except upon the prescription of a physician,
20 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor...

21 10. Code section 4060 states, in pertinent part:

22 No person shall possess any controlled substance, except that furnished to a person upon the
23 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor...

24 **Health and Safety Code**

25 11. Health and Safety Code section 11350 states, in pertinent part, that no person shall
26 possess any controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
27 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
28 practice in this state.

1 12. Health and Safety Code section 11170 states:

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

3 13. Health and Safety Code section 11173 states, in pertinent part:

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

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

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

12 ...

13 **REGULATORY PROVISIONS**

14 14. California Code of Regulations, Title 16, section 1770, states:

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

21 **COST RECOVERY**

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

26 \\\

27 \\\

28 \\\

1 **DRUGS**

2 16. "Acetaminophen and Hydrocodone", or Norco, is a Schedule III controlled substance
3 pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant
4 to Business and Professions Code section 4022. It is an opiate.

5 17. "Lorazepam", or Ativan, is a Schedule IV controlled substance pursuant to Health and
6 Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
7 Professions Code section 4022. It is an anti-anxiety medication in the benzodiazepine family.

8 18. "Clonazepam" is a Schedule IV controlled substance pursuant to Health and Safety
9 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
10 Code section 4022. It is an anti-anxiety medication in the benzodiazepine family.

11 **FACTUAL BACKGROUND**

12 19. On or about August 15, 2008, while working as a Pharmacist Intern (Intern License
13 Number INT 21448) at Target Store #T-2096 located on Claribel Road in Riverbank, California,
14 Respondent created a fictitious prescription for Hydrocodone and Acetaminophen 10/325 mg. On
15 or about September 25, 2008, October 9, 2008, November 13, 2008, November 18, 2008, January
16 2, 2009, and January 9, 2009, Respondent obtained approximately 1,440 dosage units of
17 Hydrocodone and Acetaminophen 10/325 mg. through his forged prescription at Target Store #T-
18 313, located on Pacific Avenue in Stockton, California.

19 20. On or about November 19, 2012 and November 26, 2012, Respondent created two
20 fraudulent prescriptions for Hydrocodone and Acetaminophen 10/325 mg. and Ibuprofen 800 mg.
21 by misrepresenting himself as a physician to phone in the prescription to Walgreens #11705
22 located on Floyd Avenue in Modesto, California. Respondent subsequently obtained sixty tablets
23 of Hydrocodone and Acetaminophen 10/325 mg. on November 19, 2012, sixty tablets of
24 Hydrocodone and Acetaminophen 10/325 mg. November 23, 2012, and thirty tablets of Ibuprofen
25 800 mg. on November 19, 2012, through the forged prescriptions from Walgreens #11705.
26 Respondent admitted that the prescriptions in November 2012 were fraudulent.

27 21. On or between December 2, 2012 and February 23, 2013, while working as a relief
28 pharmacist, Respondent stole Hydrocodone and Acetaminophen 10/325 mg, and/or Lorazepam,

1 and/or Clonazepam from six Target pharmacies he worked at. Respondent admitted that the
2 medications he stole and illegally possessed were used for self-medication.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Crime)**

5 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
6 for unprofessional conduct, and Code section 490, subdivision (a), in that Respondent was
7 convicted of the following crime which is substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter:

9 a. On or about July 17, 2013, in the matter of *People v. Donald Ray Wyatt III*
10 (Super. Ct. Stanislaus Co. Case No. 1455611), Respondent was convicted on his plea of nolo
11 contendere of violating Health and Safety Code section 11350, subdivision (a) (unlawful
12 possession of controlled substance), a felony, and Vehicle Code section 23103.5¹ (reckless
13 driving), a misdemeanor. The facts and circumstances are as follows:

14 b. On or about February 15, 2013, Police Officers with the Modesto Police
15 Department were dispatched to a non-injury traffic collision involving a vehicle driven by
16 Respondent that collided into a parked vehicle. The police officers found Respondent to be in
17 possession of controlled substances, to wit, 77 Hydrocodone tablets inside an unlabeled
18 prescription bottle, 36 loose Hydrocodone tablets, and a prescription bottle labeled with another
19 person's information containing 58 Lorazepam tablets and 6 Clonazepam tablets. Upon
20 questioning of Respondent, he stated that he was coming from his work as a pharmacist at Target
21 in Atwater. He admitted that he had current prescriptions for Ritalin and Zoloft, and that he did
22 not know the person whose name was on the labeled prescription bottle. The Officers observed
23 objective signs of Respondent being under the influence, and Respondent was arrested violating
24 Vehicle Code section 23152, subdivision (a), for driving under the influence of drugs, and Health

25
26 ¹ Vehicle Code Section 23103.5 is a procedural statute wherein there is acceptance of a
27 nolo contendere plea to violation of Vehicle Code Section 23103 (reckless driving), in satisfaction
28 of, or as a substitute for, an original charge of violation of Vehicle Code Section 23152 (driving
under the influence of drugs).

1 and Safety Code section 11350, for unlawful possession of controlled substances. Respondent
2 submitted a blood sample and tested positive for Benzodiazepines and Opiates.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)**

5 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
6 for unprofessional conduct, in that Respondent committed acts involving moral turpitude,
7 dishonesty, fraud, deceit and/or corruption, as set forth more fully above in paragraphs 19 through
8 21.

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
12 Code section 4060, and Health and Safety Code section 11350, as follows:

13 a. On multiple occasions, Respondent possessed controlled substances
14 (Acetaminophen and Hydrocodone, Lorazepam, and Clonazepam), without a prescription, as more
15 fully set forth above in paragraphs 19 through 21.

16 b. On or about February 15, 2013, Respondent was found to be in unlawful
17 possession of controlled substances, (Hydrocodone, Lorazepam, and Clonazepam), as more fully
18 set forth above in paragraph 22, and its subparts.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unlawful Self-Administration of Controlled Substance)**

21 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
22 and Health and Safety Code section 11170, in that on multiple instances, Respondent administered
23 to himself controlled substances, without a valid prescription, as more fully set forth above in
24 paragraphs 19 through 23, and their subparts.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Unlawful Furnishing of Dangerous Drug)**

27 26. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j),
28 section 4059, and Health and Safety Code section 11170, in that on multiple instances,

1 Respondent furnished to himself controlled substances and dangerous drugs (Acetaminophen and
2 Hydrocodone, and/or Lorazepam, and/or Clonazepam) without a valid prescription, as more fully
3 set forth above in paragraphs 19 through 21.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Obtaining Controlled Substance by Fraud, Deceit Subterfuge, and/or Concealment)**

6 27. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j),
7 and Health and Safety Code section 11173, subdivisions (a), and/or (b), and/or (c), as follows:

8 a. On multiple and regular instances, Respondent obtained controlled substances
9 (hydrocodone products), by fraud, deceit, subterfuge, and/or concealment of material facts, as
10 more fully set forth above in paragraphs 19 through 21.

11 b. On multiple instances, Respondent made false statements in prescriptions, orders,
12 reports, and/or records, as more fully set forth above in paragraphs 19 through 21.

13 c. On or about November 2012, Respondent falsely represented himself to be a
14 physician and/or other authorized person for the purpose of obtaining controlled substances, as
15 more fully set forth above in paragraphs 19 through 21.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Forgery)**

18 28. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j),
19 in that Respondent violated Code section 4324, in that Respondent falsely made, altered, forged,
20 uttered, passed, and/or attempted to pass as genuine, multiple prescriptions for drugs, as more
21 fully set forth above in paragraphs 19 through 21.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)**

24 29. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
25 in that Respondent violated statutes regulating controlled substances and dangerous drugs,
26 including Code section 4060, as set forth above in paragraph 24 and its subparts, Code section
27 4059, as set forth above in paragraph 26, Code section 4324, as set forth above in paragraph 28,
28 Health and Safety Code section 11350, as set forth above in paragraph 24 and its subparts, Health

1 and Safety Code section 11170, as set forth above in paragraphs 25 and 26, and Health and Safety
2 Code section 11173, as set forth above in paragraph 27 and its subparts.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Violation of Laws Governing Pharmacy)**

5 30. Respondent is subject to disciplinary action under Code section 4301, subdivision (o)
6 in that Respondent violated the laws governing pharmacy, as more fully set forth above in
7 paragraphs 19 through 30, and their subparts.

8 **PRAYER**

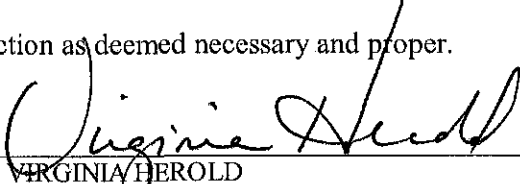
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacist License Number RPH 68413, issued to Donald
12 Ray Wyatt III;

13 2. Ordering Donald Ray Wyatt III to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;

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

17 DATED: 7/26/14

18 
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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