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

11 In the Matter of the Accusation Against:

Case No. 5110

12 **RICHARD WINFIELD MOORE III**  
13 **83638 Himilaya Drive**  
14 **Indio, CA 92203**

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

15 **Pharmacist License No. RPH 64771**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 5, 2010, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 64771 to Richard Winfield Moore III (Respondent). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on December  
24 31, 2015, 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 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,  
8 whose default has been entered or whose case has been heard by the board and found  
9 guilty, by any of the 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  
13 year.

14 (4) Revoking his or her license.

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

17 (c) The board may refuse a license to any applicant guilty of unprofessional  
18 conduct. The board may, in its sole discretion, issue a probationary license to any  
19 applicant for a license who is guilty of unprofessional conduct and who has met all  
20 other requirements for licensure. The board may issue the license subject to any terms  
21 or conditions not contrary to public policy, including, but not limited to, the following:

22 (1) Medical or psychiatric evaluation.

23 (2) Continuing medical or psychiatric treatment.

24 (3) Restriction of type or circumstances of practice.

25 (4) Continuing participation in a board-approved rehabilitation program.

26 (5) Abstention from the use of alcohol or drugs.

27 (6) Random fluid testing for alcohol or drugs.

28 (7) Compliance with laws and regulations governing the practice of  
pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any  
probationary certificate of licensure for any violation of the terms and conditions of  
probation. Upon satisfactory completion of probation, the board shall convert the  
probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with  
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the

1 Government Code, and the board shall have all the powers granted therein. The  
2 action shall be final, except that the propriety of the action is subject to review by the  
3 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

### 4 STATUTORY PROVISIONS

5 5. Code Section 4059(a) states:

6 (a) A person may not furnish any dangerous drug, except upon the prescription  
7 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
8 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
9 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
10 naturopathic doctor pursuant to Section 3640.7.

11 6. Code Section 4060 states:

12 A person shall not possess any controlled substance, except that furnished to a  
13 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
15 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
16 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
17 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
18 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
19 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic  
21 doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in  
22 containers correctly labeled with the name and address of the supplier or producer.

23 This section does not authorize a certified nurse-midwife, a nurse practitioner, a  
24 physician assistant, or a naturopathic doctor, to order his or her own stock of  
25 dangerous drugs and devices.

26 7. Section 4301 of the Code states:

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

...

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

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

...

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

1  
2 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
3 abetting the violation of or conspiring to violate any provision or term of this chapter  
4 or of the applicable federal and state laws and regulations governing pharmacy,  
including regulations established by the board or by any other state or federal  
regulatory agency.

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6 8. Health and Safety Code Section 11170 states:

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8 9. No person shall prescribe, administer, or furnish a controlled substance for  
himself.

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10 10. Health and Safety Code Section 11173 states:

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

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

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16 **REGULATORY PROVISIONS**

17 11. California Code of Regulations, title 16, (CCR) Section 1714(d) states:

18 (d) Each pharmacist while on duty shall be responsible for the security of the  
19 prescription department, including provisions for effective control against theft or  
diversion of dangerous drugs and devices, and records for such drugs and devices.  
20 Possession of a key to the pharmacy where dangerous drugs and controlled substances  
are stored shall be restricted to a pharmacist.

21 **COST RECOVERY**

22 12. Section 125.3 of the Code states, 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, with failure of the licentiate to comply subjecting the license to not being  
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

27 **DRUGS**

1 13. Adderall is a brand name for dextroamphetamine and amphetamine, a Schedule II  
2 controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a  
3 dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine  
4 salt used for attention-deficit/hyperactivity disorder and narcolepsy.

5 14. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety  
6 Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions  
7 Code section 4022. Historically, it has been used to treat nasal congestion, depression, and  
8 obesity.

9 15. Benzoyl Peroxide is a flammable white granular solid used as a bleaching agent for  
10 flour, fats, waxes, and oils, as a polymerization catalyst, and in pharmaceuticals, especially to treat  
11 acne. It is not a controlled substance but it is a dangerous drug pursuant to Business and  
12 Professions Code section 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Acts of Moral Turpitude, Dishonesty, Fraud)**

15 16. Respondent is subject to disciplinary action for unprofessional conduct under section  
16 4301(f) of the Code in that he committed acts of moral turpitude, dishonesty, fraud, deceit, or  
17 corruption, when he unlawfully obtained controlled substances from his place of employment for  
18 his own personal use. The circumstances are as follows:

19 17. Respondent worked as the Pharmacist-in-Charge at the Rite Aid Pharmacy # 5673 in  
20 Blythe, California from October 30, 2011 until his termination on December 19, 2012. In 2012,  
21 Respondent forged prescriptions for Schedule II controlled substances and dangerous drugs for  
22 himself and filled those prescriptions at Rite Aid and CVS Pharmacies in California. Respondent  
23 was able to do this because of his background and knowledge as a pharmacist. Normally,  
24 prescriptions are entered into a computer database either by a pharmacist or ancillary staff, then  
25 filled by the pharmacist or a pharmacy technician. The pharmacist then reviews the prescription a  
26 final time for accuracy before releasing it to the patient.

1 18. A complete audit was performed at the Rite Aid and CVS stores where Respondent  
2 filled the fraudulent prescriptions which revealed the following discrepancies attributable to  
3 Respondent:

4 **Prescription # 1244030 Processed at Rite Aid Store # 5678:**

5 19. On or about January 18, 2011, Respondent received a prescription for Adderall XR 20  
6 mg #60, from a physician in Rhode Island. On February 2, 2011, Respondent filled this  
7 prescription for himself at Rite Aid Store #5678, in Coachella, California. Respondent performed  
8 the data entry and the final review of this prescription indicating the prescription was verified and  
9 accurate when he knew it was illegal to furnish controlled substances to himself.

10 **Prescription #772920:**

11 20. On or about February 22, 2011, Respondent obtained Rx #772920 from a physician in  
12 Rhode Island for Adderall (dextroamphetamine) XR 20mg capsules. Respondent filled this  
13 prescription for himself on March 7, 2011, at Rite Aid Store #5679, in Desert Hot Springs,  
14 California. Respondent entered this prescription into the computer data base and audited it himself  
15 as being accurate when he knew it was illegal to furnish controlled substances to himself.

16 **Prescription #780095:**

17 21. On or about April 7, 2011, Respondent obtained Rx #780095 for Adderall XR 20mg  
18 #30, to be taken one tablet once per day, from a physician in Rhode Island. On April 18, 2011,  
19 Respondent filled this prescription for himself at Rite Aid Store #5679 in Desert Hot Springs,  
20 California, and audited it himself as being verified and accurate, when he knew it was illegal to  
21 furnish controlled substances to himself.

22 **Prescription #215038, #574625 and #577180**

23 22. On or about January 23, 2012, Respondent obtained Rx #215038 for Adderall 20 mg,  
24 #60 tablets to be taken two tablets twice per day from a physician in Bermuda Dunes, California.  
25 Respondent filled this prescription on January 23, 2012 at the pharmacy in CVS Store #9153. The  
26 pharmacist on duty, KS, changed the prescription to 10mg, #120. Respondent obtained a copy of  
27 this prescription.  
28

1           23. On or about March 15, 2012, Respondent fraudulently used a copy of Rx #215038 to  
2 create and process Rx #574625 as if it was a new prescription, and reported it to CURES<sup>1</sup> as  
3 Adderall 10 mg tablets, #120. There is no image of Rx #574625, but it is the same medication,  
4 with the same directions for use and quantity as Rx #215038. Thereafter, Respondent changed the  
5 prescription number again to Rx #577180, and filled it again at Rite Aid Store #5673 on March 15,  
6 2012. Rx #577180 was not reported to CURES. Respondent admitted to investigators that he  
7 had the Rx #215038 altered without the physician's consent or knowledge.

8           **Prescription #577967, Altered Prescription**

9           24. Sometime in 2011, Respondent received a prescription for Adderall XR 20 mg, #30  
10 tablets for himself from a physician in Rhode Island. Sometime between 2011 and April 4, 2012,  
11 Respondent altered this prescription and processed it under Rx #577967. Respondent altered the  
12 prescription by folding the right corner of the prescription down to cover the true date and then  
13 added a new date of "2/2/12" under the original date line. Respondent then filled it himself on  
14 April 4, 2012, at Rite Aid Store #5673, in Blythe, California. The physician clearly wrote the  
15 prescription for #30 tablets however; the box for #101-150 capsules had been checked. This  
16 prescribing physician, however, did not write any prescriptions for Respondent after 2011.

17           **Prescriptions #581756 and #586485, Same Prescription Filled Three Times**

18           25. On or about April 25, 2012, a CURES report indicated that Respondent obtained  
19 amphetamine salts 20 mg tablet, #60, for himself at Rite Aid Store #5673 under Rx # 581756. The  
20 same day, Respondent changed Rx #581756 to Rx #586485. Rx #586485 was never reported to  
21 CURES. Nevertheless, the same prescription was filled twice by Respondent on April 25, 2012 as  
22 two different prescriptions. On or about May 1, 2012, Respondent again filled Rx #581756 as Rx  
23 #586485 for himself as if it were a new prescription. Subsequently, on May 28, 2012, Respondent  
24 used this same prescription a third time and filled it again; however, he did not change the  
25 prescription number. There is not a hard copy or an image of this prescription anywhere in the

26 \_\_\_\_\_  
27 <sup>1</sup> CURES is an acronym for Controlled Substance Utilization Review and Evaluation  
28 System, a program administered by the California Department of Justice to decrease the amount of  
prescription drug abuse.

1 records; however, Respondent verified that the prescription was accurate.

2 **Prescription #586486**

3 26. On or about May 28, 2012, Respondent filled Rx #586486 for himself for Benzoyl  
4 Peroxide 5% Wash, #237 ml. Although this is not a controlled substance, it is a dangerous drug  
5 that requires a prescription pursuant to Business and Professions Code section 4022. There is not  
6 a hard copy of the prescription; however there is a computer print-out that indicated the  
7 prescription was written on March 27, 2012, and filled on May 28, 2012, and that Respondent  
8 reviewed the prescription himself for accuracy.

9 **Prescription #608117**

10 27. On or about October 11, 2012, Respondent filled Rx #608117 for himself for  
11 Amphetamine salts 20mg, #43 tablets at Rite Aid Store #5673. This location does not have a hard  
12 copy of this prescription but there is a computer print-out documenting the prescription was for  
13 Respondent, and that Respondent entered the prescription into the computer data base and verified  
14 the prescription for accuracy when he knew it was illegal to furnish controlled substances to  
15 himself.

16 28. According to the Department of Justice, Respondent obtained 1,110 tablets/capsules  
17 of amphetamine salts over a twenty-two (22) month period. This is an average of over 50  
18 tablets/capsules per month. Although, not all the prescriptions that Respondent filled for himself  
19 are listed on the CURES report, for example Respondent obtained amphetamine salts under Rx  
20 #586485 on three different occasions, and Respondent processed Rx #215038 under Rx #577180  
21 and Rx #574625, but never reported these prescriptions to CURES.

22 29. During a discussion with investigators for Rite Aid, and the Board of Pharmacy,  
23 Respondent admitted that he had falsified prescriptions for amphetamines. In a written statement  
24 Respondent admitted that the reason there were no hard copies of the prescriptions at Rite Aid  
25 Store #5673 was because he had the prescriptions filled at CVS pharmacies and felt compelled to  
26 fill them again at Rite Aid without the hard copy.

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**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct –Signing False Documents)**

30. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(g) by knowingly making or signing a certificate or other document that falsely represented the existence or nonexistence of a state of facts, as set forth above in paragraphs 16 through 29, which are incorporated by reference. .

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct –Unlawfully Possessed and Furnished Dangerous Drugs)**

31. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 4059 and 4060 pursuant to Code section 4301 subsections (j) and (o), in that he possessed and furnished dangerous drugs to himself without a prescription from a physician or other qualified prescriber, as set forth above in paragraphs 16 through 29, which are incorporated by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct –Fraud, Deceit, Subterfuge)**

32. Respondent is subject to disciplinary action under Health and Safety Code sections 11170 and 11173(a), pursuant to Code section 4301, subsections (j) and (o), in that he possessed and furnished controlled substances to himself by fraud, deceit, misrepresentation, or subterfuge, as set forth above in paragraphs 16 through 29, which are incorporated by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct –False Statements in Prescriptions, Records, Reports)**

33. Respondent is subject to disciplinary action under Health and Safety Code section 11173(b), pursuant to Code section 4301, subsections (j) and (o), in that he made false statements in prescriptions, reports, or records required by the Pharmacy Practice Act, and as set forth above in paragraphs 16 through 29, which are incorporated by reference.

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**PRAYER**

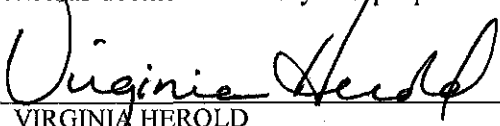
1           WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
2 and that following the hearing, the Board of Pharmacy issue a decision:

3           1.     Revoking or suspending Pharmacist License Number RPH 64771, issued to Richard  
4 Winfield Moore, III;

5           2.     Ordering Richard Winfield Moore, III to pay the Board of Pharmacy the reasonable  
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code  
7 section 125.3; and

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

9           DATED: 6/16/14



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

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