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

10 In the Matter of the Accusation Against:

Case No. 5260

11 **STEPHEN MATTHEW COTE**
12 **308 Larkin Drive**
13 **Benicia, California 94510**

A C C U S A T I O N

14 **Pharmacist License No. RPH 35719**

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16 Respondent.

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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 August 25, 1980, the Board of Pharmacy issued Pharmacist License
23 Number RPH 35719 to Stephen Matthew Cote (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 29,
25 2016, 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 4300.1 of the Code states:

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

11 **STAUTORY PROVISIONS**

12 5. Section 4300 of the Code states:

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

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

17 "(1) Suspending judgment.

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

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

20 "(4) Revoking his or her license.

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

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

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

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

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

21 7. Section 4059 of the Code states in pertinent part that:

22 A person may not furnish any dangerous drug, except upon the prescription of a physician,
23 dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device,
24 except upon the prescription of a physician, dentist, podiatrist, optometrist or veterinarian.

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1 8. Section 11173(a) of the Health and Safety Code provides in pertinent part that:
2 No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure
3 the administration of or prescription for controlled substances, (1) by fraud, deceit,
4 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

5 9. Section 11350 of the Health and Safety Code provides in pertinent part that:
6 Every person who possesses any controlled substances without a written prescription shall be
7 punished by imprisonment in a county jail for not more than one year.

8 10. Section 4060 of the Code provides in pertinent part that:
9 "No person shall possess any controlled substance, except that furnished to a person upon
10 the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, furnished pursuant
11 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
12 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1."

13 11. California Code of Regulations, title 16, section 1770, states:
14 "For the purpose of denial, suspension, or revocation of a personal or facility license
15 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
16 crime or act shall be considered substantially related to the qualifications, functions or duties of a
17 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
18 licensee or registrant to perform the functions authorized by his license or registration in a manner
19 consistent with the public health, safety, or welfare."

20 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
21 administrative law judge to direct a licensee found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

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1 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

2 13. Business and Professions Code section 4021 defines the term "Controlled Substance"
3 as "any substance listed in Chapter 2 (commenting with Section 11053) of Division 10 of the
4 Health and Safety Code."

5 14. Section 4022 of the Code states

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

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

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

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

15 15. **Norco**, a brand of hydrocodone (an opiate) combined with acetaminophen, is a
16 Scheduled III controlled substances as designated by Health and Safety Code section 11056(e)(4)
17 and is a dangerous drug as defined by Business and Professions Code section 4022, and is used
18 for relief of moderate to severe pain.

19 16. **Phendimetrazine**, a stimulant, is a Schedule III controlled substance as designated
20 by Health and Safety Code section 11056(b)(6) and is a dangerous drug as defined by Business
21 and Professions Code section 4022, and is used for appetite suppression.

22 17. **Phentermine**, a stimulant, is a Schedule IV controlled substance as designated by
23 Health and Safety Code section 11057(f)(4) and is a dangerous drug as defined by Business and
24 Professions Code section 4022, and is used for appetite suppression.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Dishonest/Fraudulent Acts)**

3 18. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301(f) and Health and Safety Code section 11173 in that Respondent
5 dishonestly/fraudulently appropriated quantities of medications from Safeway Pharmacy at Store
6 No. 1631, located at 122 Robles Drive, Vallejo, California, while on duty as a licensed
7 pharmacist at the store. The circumstances as follows:

8 a. On or about November 25, 2013, Respondent was terminated from his
9 Pharmacist position for theft of medications from Safeway Pharmacy at Store No. 1631.
10 Respondent admitted to Safeway representatives and later to a Board investigator that on or about
11 November 19, 2013, he had stolen one (1) bottle of Phendimetzatrazine and one (1) bottle of
12 Phentermine for purposes of his own self-administration and use.

13 b. A subsequent audit and investigation revealed additional discrepancies in the
14 medication inventory of the pharmacy, consistent with theft, wherein it was determined that
15 Respondent had engaged in a surreptitious practice of manually ordering medications
16 hydrocodone, phendimetzatrazine, and phentermine through a process that would go undetected as
17 opposed to using the usual electronic process, and then accepting and receiving the shipped
18 medications on his planned work days without the knowledge of other workers at the pharmacy.
19 Respondent would then fail to log the medications in the computer system and take them for his
20 own use.

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SECOND CAUSE FOR DISCIPLINE

(Unlawful Furnishing of Controlled Substances/Dangerous Drugs)

19. Respondent is subject to disciplinary action under Business and Professions Code section 4301(j) and 4059, in that as described above in paragraph 18, Respondent was in possession and self-furnishing of controlled substances and/or dangerous drugs without a prescription for them.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances/Dangerous Drugs)

20. Respondent is subject to disciplinary action under Business and Professions Code section 4301(j) and 4060, in that as described above in paragraph 18, Respondent was in possession of controlled substances and/or dangerous drugs without a prescription for them.

FOURTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances/Dangerous Drugs)

21. Respondent is subject to disciplinary action under Business and Professions Code section 4301(h) in that as described above in paragraph 18, Respondent self-administered controlled substances and/or dangerous drugs in a manner dangerous to himself.

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1 DISCIPLINARY CONSIDERATIONS

2 22. To assist in determining the proper level of discipline, if any, to be imposed on
3 Respondent Cote, Complainant further alleges the following license history for Respondent:

4 23. On or about April 18, 2004, in a prior disciplinary action titled *In the Matter of the*
5 *Accusation Against Stephen Matthew Cote*, Case No. 2645 before the Board of Pharmacy,
6 Respondent's Pharmacist License was subject to disciplinary action imposed by the Board as
7 follows:

8 a. On or about June 23, 2003, Accusation No. 2645 was filed before the Board with
9 regard to Respondent, alleging that Respondent was guilty of unprofessional conduct pursuant to
10 Business and Professions Code section(s) 4301(f), 4301(h), 4301(j), and 4301(o) for the dishonest
11 and fraudulent appropriation of large quantities of medication from Kentfield Hospital located at
12 1125 C Sir Francis Drake Drive, in Kentfield, California, while Respondent was on duty and the
13 use and self-administration thereof.

14 b. In or about January 21, 2004, Respondent agreed to a Stipulated Settlement and
15 Disciplinary Order admitting to all of the charges and allegations alleged in the Accusation and
16 agreeing to accept the Stipulated Disciplinary Order.

17 c. By Decision and Order of the Board effective April 18, 2004, Respondent's license was
18 revoked, stayed with a period of probation of five (5) years on specified terms and conditions.
19 That Decision and Order is now final and is incorporated by reference as if fully set forth herein.

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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:

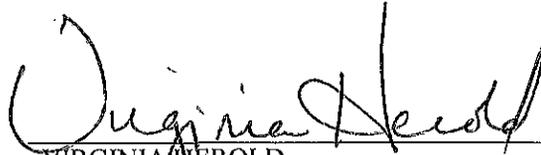
1. Revoking or suspending Pharmacist License Number RPH 35719, issued to Stephen Matthew Cote;

2. Ordering Stephen Matthew Cote 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;

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

DATED: _____

3/13/15



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

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