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

11 In the Matter of the Accusation Against:

Case No. 5411

12 **JEFFREY ALLEN KILLIAN**  
13 **425 West Beach Street, Unit 1258**  
14 **San Diego, CA 92101**

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

15 **Pharmacist License No. RPH 56456**

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 4, 2004, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 56456 to Jeffrey Allen Killian (Respondent). The Pharmacist License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on September  
24 30, 2016, 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.

1           4.     Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4           5.     Section 4300(a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6           6.     Section 4300.1 of the Code states:

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

11                     **STATUTORY PROVISIONS & REGULATORY PROVISIONS**

12           7.     Section 482 of the Code states:

13                     Each board under the provisions of this code shall develop criteria to evaluate  
14 the rehabilitation of a person when:

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

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

17                     Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19           8.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
20 revoke a license on the ground that the licensee has been convicted of a crime substantially related  
21 to the qualifications, functions, or duties of the business or profession for which the license was  
22 issued.

23           9.     Section 493 of the Code states:

24                     Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or  
26 to suspend or revoke a license or otherwise take disciplinary action against a person  
27 who holds a license, upon the ground that the applicant or the licensee has been  
28 convicted of a crime substantially related to the qualifications, functions, and duties  
of the licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of  
2 the crime in order to fix the degree of discipline or to determine if the conviction is  
3 substantially related to the qualifications, functions, and duties of the licensee in  
4 question.

5 As used in this section, "license" includes "certificate," "permit," "authority,"  
6 and "registration."

7 10. Section 4301 of the Code states:

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

12 . . . .

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

19 . . . .

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

. . . .

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

6 . . . .

7 11. Section 4327 of the Code states:

8 Any person who, while on duty, sells, dispenses or compounds any drug  
9 while under the influence of any dangerous drug or alcoholic beverages shall be  
10 guilty of a misdemeanor.

### 11 REGULATORY PROVISIONS

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

13 . . . .

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

- 18 (1) Nature and severity of the act(s) or offense(s).
- 19 (2) Total criminal record.
- 20 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 21 (4) Whether the licensee has complied with all terms of parole, probation,  
22 restitution or any other sanctions lawfully imposed against the licensee.
- 23 (5) Evidence, if any, of rehabilitation submitted by the licensee.

24 13. California Code of Regulations, title 16, section 1770, states:

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

### 29 COST RECOVERY

30 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
31 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
4 included in a stipulated settlement.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(December 22, 2014 Criminal Conviction for Operating a Vehicle Under the Influence)**

7 15. Respondent has subjected his license to discipline under sections 490 and 4301,  
8 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
9 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

10 a. On or about December 22, 2014, in a criminal proceeding entitled *People of the State*  
11 *of Iowa v. Jeffrey Allen Killian*, Court case number 05771 OWOM078573 (Polk), Respondent  
12 was convicted on his plea of guilty to violating Iowa Code Ann., section 321J.2(2)(a), operating a  
13 vehicle while under the influence of alcohol (First Offense).

14 b. As a result of the conviction, Respondent was ordered to serve time in jail, ordered to  
15 complete the OWI 1<sup>st</sup> Program, and required to pay fines.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

18 16. Respondent has subjected his license to disciplinary action under section 4301,  
19 subdivision (h) of the Code in that Respondent used alcoholic beverages in a manner dangerous or  
20 injurious to himself and the public in that Respondent drove a vehicle while under the influence of  
21 an alcoholic beverage, which posed a serious risk of injury and/or death to himself and to the  
22 public, as detailed in paragraph 15, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Functioning as a Pharmacist While Under the Influence of Alcohol)**

25 17. Respondent is subject to disciplinary action under section 4301, subdivision (h) and  
26 section 4301, subdivision (o), for violation of Business Professions Code section 4327, in that on  
27 December 2, 2014, Respondent worked as a pharmacist while he was under the influence of  
28

1 alcohol to the extent that it impaired his ability to practice safely. The circumstances are as  
2 follows:

3 a. Respondent worked as a contract employee pharmacist for RPH On the Go at Marian  
4 Regional Medical Center in Santa Maria, California. On December 2, 2014, Respondent arrived  
5 for his shift at approximately 10:15 a.m. At approximately 11:15 a.m., the Pharmacy Manager  
6 engaged in a conversation with Respondent and observed objective signs and symptoms that  
7 Respondent was under the influence of alcohol. Respondent's speech was slurred, his eyes were  
8 half open and droopy, he appeared sleepy, and he smelled faintly of an alcoholic beverage.

9 b. After observing Respondent's behavior, the Pharmacy Manager contacted the HR  
10 department. Respondent voluntarily agreed to undergo testing for drugs and alcohol. Respondent  
11 was escorted out of the pharmacy and taken to the Industrial Medical Group, where the substance  
12 testing was performed. Respondent's blood alcohol content was .147.

### 13 **DISCIPLINARY CONSIDERATIONS**

14 18. Respondent voluntarily entered the Board's Maximus diversion program on December  
15 16, 2014. During his intake interview, Respondent admitted to taking several prescribed  
16 controlled substances and having tested positive for alcohol during his shift as a pharmacist. Upon  
17 enrollment in the program, Respondent agreed to Recovery Terms and Conditions, which included  
18 submitting copies of all of his current prescriptions to Maximus. Respondent failed to provide  
19 copies of his prescriptions to Maximus and provided unreliable self reports about his use of  
20 controlled substances. As such, on February 5, 2015, Respondent was terminated from the  
21 Maximus program as a public safety risk for failing to cooperate with the program requirements.

### 22 **PRAYER**

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

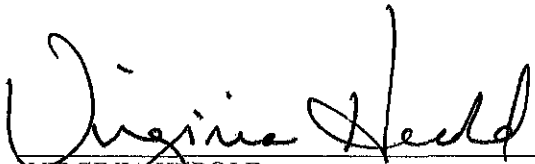
25 1. Revoking or suspending Pharmacist License Number RPH 56456, issued to Jeffrey  
26 Allen Killian;

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2. Ordering Jeffrey Allen Killian 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: 3/30/15



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

SD2015700358