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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **DARYL SCOTT WOLFE** **1529 Golf Course Drive** **Windsor, CA 95492** **Pharmacist License No. RPH 46273** Respondent.	Case No. 5825 OAH No. 2016050553 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about August 10, 1993, the Board issued Pharmacist License No. RPH 46273 to Daryl Scott Wolfe (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

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

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

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

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

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter 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.

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

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the 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 her license or registration in a manner consistent with the public health, safety, or welfare."

9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

12. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or 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. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FACTUAL BACKGROUND

15. On or about July 9, 2015, February 11, 2016, and February 20, 2016, Respondent was interdicted and arrested by police agencies on suspicion of driving while under the influence of drugs in violation of Vehicle Code section 23152, subdivision (e).

16. The blood sample taken from Respondent incident to the February 11, 2016 arrest showed a positive result for the presence of **benzodiazepines**, a Schedule IV controlled substance and a central nervous system depressant.

17. On or about April 28, 2016, Respondent's employer (CVS Pharmacy) made an impaired pharmacist report to the Board of Pharmacy, noting that on or about March 23, 2016, Respondent reported to work as a pharmacist at a CVS Pharmacy location exhibiting symptoms consistent with drug impairment including: being unsteady on his feet, swaying back and forth, being unable to access the dispensing system on the computer for several minutes, slurring his speech, seeming confused, acting strangely, having glassy eyes, and being unable to answer simple questions. After his employer determined that he was unfit to work and called him a cab, Respondent dropped the same item multiple times on his way out to the parking lot, and stumbled and nearly fell when he was trying to retrieve the item.

18. On or about May 2, 2016, during an interview with a Board of Pharmacy Inspector, Respondent refused to answer any questions about his conduct or any drug consumption during or prior to his arrests on July 9, 2015, February 11, 2016, and February 20, 2016. He did say that he did not have any prescriptions for controlled substances before or subsequent to these arrests, and said that he was not taking any controlled substances. He said that he last received a prescription for controlled substances in September or October 2015, for **clonezapam**, but gave the drugs to his wife for her use. Respondent admitted receiving monthly injections of Vivitrol, a medication indicated for treatment of alcohol dependence or for prevention of relapse to opioid dependence. But he insisted he had not consumed alcohol for over ten (10) years, contradicting an admission he made to the same Board of Pharmacy Inspector in August 2014 that he had begun drinking again in April 2014 due to family stress, including his own and family members' medical issues.

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FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)

19. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 15-18 above, engaged in one or more acts involving moral turpitude, dishonesty, fraud, or deceit.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

20. Respondent is subject to discipline under section 4301(h), (j) and/or (o) of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 15-18 above above, administered to himself, and/or conspired to self-administer, and/or assisted or abetted self-administration of, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 15-18 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.\

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 15-18 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

23. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 15-22 above, engaged in unprofessional conduct.

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 46273, issued to Daryl Scott Wolfe (Respondent);

2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 7/15/16

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

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