

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 JOSHUA B. EISENBERG
Deputy Attorney General
4 State Bar No. 279323
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-1466
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6117

13 **PATRICK ANDREW HACKETT, RPH**
1865 Herdon Ave., K279
Clovis, CA 93611

A C C U S A T I O N

14 **Pharmacist License No. RPH 51731**

15 Respondent.

16
17
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 29, 2000, the Board of Pharmacy issued Pharmacist License
23 Number RPH 51731 to Patrick Andrew Hackett (Respondent). The Pharmacist License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on February
25 28, 2018, 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. Code section 4011 provides, in pertinent part, that the Board shall administer and
6 enforce both the Pharmacy Law [Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Code section 4300 states, in pertinent part, that every license issued may be
9 suspended or revoked.

10 6. Code section 4300.1 states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued license
12 by operation of law or by order or decision of the board or a court of law, the
13 placement of a license on a retired status, or the voluntary surrender of a license by a
14 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.

15 **STATUTORY PROVISIONS**

16 7. Section 4301 of the Code states, in pertinent part:

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

20 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 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.

22 ...

23 (h) The administering to oneself, of any controlled substance, or the use of any
24 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.

25 ...

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

28 ...

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 chapter
3 or of the applicable federal and state laws and regulations governing pharmacy,
4 including regulations established by the board or by any other state or federal
5 regulatory agency . . .

6 8: Section 4059 of the Code states, in pertinent part:

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

12 9. Section 4022 of the Code states:

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

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

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

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

23 10. Section 4060 of the Code states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person
25 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
26 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued
27 by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to
28 Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor
pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of
paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
Section 4052.

COST RECOVERY

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

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1 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

2 12. Phentermine is a Schedule IV controlled substance as defined in Health and Safety
3 Code section 11057, and is categorized as a dangerous drug pursuant to Code section 4022.

4 13. Buprenorphine and Naloxone sublingual is a Schedule V¹ controlled substance as
5 defined in Health and Safety Code section 11058, and is categorized as a dangerous drug pursuant
6 to Code section 4022.

7 14. Sildenafil is categorized as a dangerous drug pursuant to Code section 4022.

8 15. Promethazine with codeine is a Schedule V controlled substance as defined in Health
9 and Safety Code section 11058, and is categorized as a dangerous drug pursuant to Code section
10 4022.

11 **FACTUAL ALLEGATIONS**

12 16. At all times alleged herein, Respondent was a Registered Pharmacist and employed in
13 his licensed capacity by Rite Aid #5863 (Rite Aid), in Fresno, California.

14 17. On or about September 26, 2016, during the course of an investigation by Rite Aid,
15 Respondent admitted that shortly after he started working for Rite Aid in February 2016, he began
16 stealing Phentermine 37.5 mg caps from the pharmacy for self-use in an effort to lose weight. He
17 stated that to avoid detection, he took the small amounts at a time 2-3 times a week, and estimated
18 taking a total of approximately 100-140 capsules tablets over several months. Respondent also
19 admitted to stealing 3-4 Sildenafil tablets between June-July 2016, and 7-8 Suboxone 8mg film
20 tablets on one occasion in or around July 2016.

21 18. Rite Aid video surveillance was obtained during Rite Aid's investigation. The video
22 surveillance shows Respondent selecting medication from pharmacy stock and placing medication
23 into his hand. Respondent signed a statement admitting to taking phentermine capsules and
24 tablets, Sildenafil, and Suboxone for self-use.

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26 _____
27 ¹ In October 2002, the Federal Government (Drug Enforcement Administration), placed
28 buprenorphine and all products containing buprenorphine into the Federal Schedule III controlled
substance classification.

1 19. Following Rite Aid's investigation, it was determined that Respondent stole the
2 following controlled substances:

- 3 a. 137 Phentermine 37.5 mg capsules
- 4 b. 186 Phentermine 37.5 mg tablets
- 5 c. 305 Phentermine 15 mg capsules
- 6 d. 9 Suboxone 8 mg/2 mg film tabs
- 7 e. 531 ml of Promethazine/Codeine 10 mg/5 ml syrup.

8 Respondent was terminated by Rite Aid effective October 4, 2016.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Acts Involving Dishonesty, Fraud, Deceit, or Corruption)

11 20. Respondent is subject to disciplinary action pursuant to Code section 4301(f), for
12 unprofessional conduct, in that between in or around February 2016 and September 2016, while
13 on duty as a registered pharmacist at Rite Aid, he committed acts of dishonesty, fraud, or deceit,
14 as more fully set forth in paragraphs 16-19, above.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Self-Administration of Controlled Substances)

17 21. Respondent is subject to disciplinary action pursuant to Code section 4301(h), for
18 unprofessional conduct, in that between in or around February 2016 and September 2016, while
19 on duty as a registered pharmacist at Rite Aid, he self-administered controlled substances, as more
20 fully set forth in paragraphs 16-19, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Violation of State Statutes Regulating Dangerous Drugs)

23 22. Respondent is subject to disciplinary action pursuant to Code section 4301(j), for
24 unprofessional conduct, in that between in or around February 2016 and September 2016,
25 Respondent violated state statutes regulating dangerous drugs, as follows:

- 26 a. Respondent possessed dangerous drugs without a valid prescription from a physician,
27 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor in violation of Code section
28 4060, as more fully set forth in paragraphs 16-19, above.

