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

In the Matter of the Accusation Against: LORI HAZEL DIBENEDETTO 12 Oakland Rd. Exeter, NH 03833 and 4440 Antiqua Way Oxnard, CA 93035 Pharmacist License No. RPH 49700 Respondent.	Case No. 2810 **DEFAULT DECISION AND ORDER** [Gov. Code § 11520]

FINDINGS OF FACT

1. On or about April 14, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2810 against Lori Hazel Dibenedetto (Respondent) before the Board of Pharmacy.

2. On or about September 10, 1997, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 49700 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

3. On or about April 21, 2005, Anna Carpenter, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2810, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

which was and is 12 Oakland Rd., Exeter, NH 03833. On or about April 21, 2005, a copy of the Accusation and supporting documents were also served on Respondent at 4440 Antiqua Way, Oxnard, CA 93035. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On May 2, 2005, the Accusation was received and signed for at Respondent's address of record. A copy of the postal return receipt is incorporated herein by reference. On or about May 16, 2005, the Accusation served at the Antigua Way address was returned by the postal service marked "Return To Sender, Unclaimed."

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2810.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibit A finds that the allegations in Accusation No. 2810 are true.

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10. The total costs for investigation and enforcement are $5,006.25 as of June 10, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Lori Hazel Dibenedetto has subjected her Pharmacist License No. RPH 49700 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4301(l) and California Code of Regulations, title 16, section 1770 - convicted of crimes substantially related to the qualifications, duties, and functions of a pharmacist.

b. Business and Professions Code section 4301(k) - crimes involving use of controlled substances and dangerous drugs.

c. Business and Professions Code section 4301(j) - unlawful possession of controlled substances and dangerous drugs.

d. Business and Professions Code section 4301(h) - use of controlled substances and dangerous drugs in a manner as to be dangerous or injurious to oneself.

e. Business and Professions Code section 4301 - unprofessional conduct.

f. Business and Professions Code sections 4301(f), 475(a)(3) and 480(a)(2) - acts involving moral turpitude, dishonesty, fraud, deceit.

g. Business and Professions Code sections 4301(p) and 480(a)(3), and California Code of Regulations, title 16, section 1770 - conduct warranting denial of license.

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ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 49700, heretofore issued to Respondent Lori Hazel Dibenedetto, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 18, 2005.

It is so ORDERED July 19, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2810

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Exhibit A

Accusation No. 2810

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

In the Matter of the Accusation Against: **LORI HAZEL DIBENEDETTO** 4440 Antiqua Way Oxnard, CA 93035 - and - 12 Oakland Rd. Exeter, NH 03833 Pharmacist License No. RPH 49700 Respondent.	Case No. 2810 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 10, 1997, the Board issued Pharmacist License No. RPH 49700 to Lori Hazel Dibenedetto (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

JURISDICTION

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

4. Section 118, subdivision (b), states: "The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewe restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an ord suspending or revoking the license or otherwise taking disciplinary action against the licensee o any such ground."

5. Section 4300, subdivision (a), states: "Every license issued may be suspended or revoked."

6. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of 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.

. . . .

"(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 or of the United States regulating controlled substances and dangerous drugs.

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(l) The conviction of a crime substantially related to the qualifications, functions and duties of a licensee under this chapter. . . .

. . . .

"(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.

"(p) Actions or conduct that would have warranted denial of a license."

7. Section 475 states, in pertinent part:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

. . . .

"(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another. . . ."

8. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . . .

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in

question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or a is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . . ."

9. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has bee convicted of a crime, if the crime is substantially related to the qualifications, functions, or dutie of the business or profession for which the license was issued . A conviction within the meanin of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction ha been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

10. Section 4051 states, in pertinent part:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

11. Section 4059 states, in pertinent part

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian."

12. Section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to

Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1."

13. Health and Safety Code section 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

14. Health and Safety Code section 11350(a) states, in pertinent part: "Excep as otherwise provided in this division, every person who possesses (1) any controlled substance . . . specified in subdivision (b) or (c) of Section 11055, . . . or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison."

15. Health and Safety Code section 11377(a) states, in pertinent part: ". . . every person who possesses any controlled substance which is . . . specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, o veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison."

16. Health and Safety Code section 11550(a) states, in pertinent part: "No person shall use, or be under the influence of any controlled substance which is . . . specified in subdivision (b) . . . of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) . . . of Section 11055, . . . except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances."

17. 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 his license or registration in a manner consistent with the public health, safety, or welfare."

18. Section 125.3 provides, 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.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

19. Amphetamine is a Scheduled II controlled substance as defined in Health and Safety Code section 11055(d)(1), and is categorized as a dangerous drug pursuant to Section 4022 of the Code.

20. Methamphetamine is a Schedule II controlled substance as defined in Health and Safety Code section 11055(d)(2), and is categorized as a dangerous drug pursuant to Section 4022 of the Code.

21. OxyContin is a brand name for Oxycodone Hydrochloride, which is an opioid agonist and a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1) and a dangerous drug pursuant to Section 4022 of the Code.

22. Health and Safety Code section 11020 states, in pertinent part: "'Opiate' means any substance having an addiction-forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability."

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

23. Respondent is subject to disciplinary action pursuant to Sections 4300(a), 490, and 4301(l) of the Code, and California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, duties and functions of a pharmacist, as follows:

Case No. 2004034336MA

24. On or about October 28, 2004, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004034336MA, Respondent was convicted on a plea of guilty for violating Penal Code sections 530.5(a) (identity theft), a misdemeanor, and 484g(a) (grand theft), a misdemeanor.

25. The circumstances of the conviction are that on or about September 9, 2004, Respondent was arrested after being found in possession of stolen property that had been taken during a vehicle burglary on August 18, 2004. The burglary victim was Hillary Wallace, and Respondent was found with Ms. Wallace's identification, checkbook, credit cards, and ATM card. At the time of her arrest, Respondent was in a hotel room which she checked into under the name Hillary Wallace. Ms. Wallace reported to law enforcement officers that she did not know Respondent nor authorize Respondent to use or have possession of her credit cards, checkbook, identification, or ATM card.

Case No. 2004032126MA

26. On or about October 23, 2004, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004032126MA, Respondent was convicted on a plea of guilty for violating Health and Safety Code section 11364 (possession of injection device), a misdemeanor.

27. The circumstances of the conviction are that on or about August 19, 2004,Ventura Police Department officers responded to a call from paramedics for assistance as Respondent had locked herself in a restaurant bathroom and refused to come out, claiming she was sick. After paramedics convinced Respondent to unlock the door and come out of the bathroom, Respondent gave the paramedics a syringe from her purse that was filled with a clear liquid. Respondent admitted to being a heroin user, and said she was having possible withdrawal symptoms and felt sick. Respondent was taken to a hospital for medical treatment, where she was later arrested because of three outstanding warrants and her possession of the syringe.

Case No. 2004022542MA

28. On or about August 30, 2004, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004022542MA, Respondent was convicted on a plea of nolo contendere for violating Health and Safety Code section 11550(a) (under influence of controlled substance), a misdemeanor.

29. The circumstances of the conviction are that on or about June 8, 2004, Respondent was arrested after Ventura County sheriff deputies observed that Respondent

exhibited signs and symptoms that she was under the influence of a combination of heroin and central nervous system (CNS) stimulant. Among other things, the deputies observed fresh scab and several puncture wounds on Respondent's arms, which appeared to be of the type caused by the use of a hypodermic needle. The wounds were over and following a visible vein. The deputies also observed that Respondent's speech was rapid and mumbled, her body movements were rapid and jerky, and she exhibited mood changes ranging from paranoia and excitement to state of stupor. Respondent admitted to the deputies that she had injected illegal drugs three day earlier. In Respondent's hotel room, the deputies found a plastic grocery bag with two hypodermic needles, a third hypodermic needle floating in the toilet tank, and a ziplock baggy containing a white powdery residue inside Respondent's purse.

Case No. 2004009451FA

30. On or about August 30, 2004, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2004009451FA, Respondent was convicted on a plea of guilty for violating Health and Safety Code section 11377(a) (possession of a controlled substance), a felony.

31. The circumstances of the conviction are that, on or about March 11, 2004, Respondent did unlawfully possess a controlled substance, to wit, methamphetamine. Ventura Police Department officers observed that Respondent displayed signs and symptoms of being under the influence of a central nervous system (CNS) stimulant. Respondent appeared nervous; she shifted from side to side and tried to avoid eye contact; her speech was rapid; her eyes were red and watery, and her pupils were dilated.

Case No. 2003037046MA

32. On or about August 30, 2004, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Ventura County Superior Court, Case No. 2003037046MA, Respondent was convicted on a plea of guilty for violating Health and Safety Code section 11550(a) (under influence of controlled substance), a misdemeanor.

33. The circumstances of the conviction are that, on or about November 7, 2003, Oxnard Police Department Officers conducted a routine traffic stop of a vehicle driven by

Respondent. Respondent was found in possession of controlled substances (OxyContin and Amphetamine) without a valid prescription. Respondent also exhibited signs and symptoms tha she was under the influence of controlled substances.

Case No. CH01SM04099

34. On or about April 26, 2002, in a criminal proceeding entitled *People v. Lori Hazel Dibenedetto* in Orange County Superior Court, Case No. CH01SM04099, Respondei was convicted on a plea of guilty for violating Vehicle Code section 23103 (reckless driving), a misdemeanor.

35. The circumstances of the conviction are that, on or about July 21, 2001, Respondent did willfully and unlawfully drive a vehicle while under the influence of alcohol and/or drugs.

SECOND CAUSE FOR DISCIPLINE

(Drug Related Convictions)

36. Respondent is subject to discipline under Sections 4300(a) and 4301(k) of the Code, on the grounds of unprofessional conduct, in that on or between August 30, 2004 and October 23, 2004, Respondent was convicted of crimes involving the use, consumption, or self-administration of controlled substances and dangerous drugs, as alleged in Paragraphs 26-35, above.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances/Dangerous Drugs)

37. Respondent is subject to disciplinary action pursuant to Sections 4300(a) and 4301(j) of the Code, on the grounds of unprofessional conduct, for violating Section 4060 of the Code and Health and Safety Code sections 11350 and 11377, in that Respondent was in possession of controlled substances and dangerous drugs without a valid prescription. On or about November 7, 2003, Respondent was in possession of OxyContin and Amphetamine, as alleged in Paragraph 33, above. On or about March 11, 2004, Respondent was in possession of Methamphetamine, as alleged in Paragraph 31, above.

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FOURTH CAUSE FOR DISCIPLINE

(Use of Controlled Substances/Dangerous Drugs)

38. Respondent is subject to disciplinary action under Sections 4300(a) and 4301(h) of the Code, on the grounds of unprofessional conduct, for violating Health and Safety Code section 11170, in that Respondent administered controlled substances/dangerous drugs to herself to the extent or in a manner as to be dangerous or injurious to oneself, as alleged in Paragraphs 27, 29, 31, 33, and 35, above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

39. Respondent is subject to disciplinary action under Sections 4300(a) and 4301 of the Code, on the grounds of unprofessional conduct, in that on or between July 21, 2001 and September 9, 2004, Respondent committed unprofessional acts which directly relate to the qualifications, functions, and duties of a pharmacist, as alleged in Paragraphs 25, 27, 29, 31, 33, and 35, above.

SIXTH CAUSE FOR DISCIPLINE

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

40. Respondent is subject to disciplinary action under Sections 4300 and 4301(f) of the Code, in conjunction with Sections 475(a)(3) and 480(a)(2), in that on or about September 9, 2004, Respondent committed acts involving moral turpitude, dishonesty, fraud and deceit, as alleged in Paragraph 25, above.

SEVENTH CAUSE FOR DISCIPLINE

(Conduct Warranting Denial of License)

41. Respondent is subject to disciplinary action under Sections 4300, 4301(p), and 480(a)(3) of the Code, and California Code of Regulations, title 16, section 1770, in that on or between July 21, 2001 and September 9, 2004, Respondent engaged in conduct that would have warranted denial of a license, as alleged in Paragraphs 24-35, above.

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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:

A. Revoking or suspending Pharmacist License No. RPH 49700, issued to Lori Hazel Dibenedetto;

B. Ordering Lori Hazel Dibenedetto 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; and

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

DATED: 4/14/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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(03/25/05)