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

In the Matter of the Accusation Against: **ROBERT DEAN MIX** **23705 Vanowen Street #189** **West Hills, CA 91307** **-and-** **7045 Scarborouth Peak Drive** **West Hills, CA 91307-1212** **Original Pharmacist License No.** **RPH 27779** **Respondent.**	**Case No. 2888** **OAH No. L2006040756**

PROPOSED DECISION

This matter came on regularly for hearing on September 8, 2006, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Patricia F. Harris (Complainant) was represented by Kimberlee D. King, Deputy Attorney General.

Robert Dean Mix (Respondent) was present and was represented by Chad Calabria, Attorney at Law.

During the hearing, Complainant amended the Accusation at page 9, line 10, by substituting "pharmacy" for "nursing."

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Oral and documentary evidence was received. The record was held open to and including September 12, 2006, for Complainant's counsel to produce a time sheet evidencing time spent on this matter. Upon receipt, the parties agreed that the time sheet would be attached to and made a part of Complainant's Exhibit 3. The time sheet was timely received. It was attached to and made a part of Complainant's Exhibit 3. On September 12, 2006, the record was closed, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

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

2. On July 14, 1972, the Board issued Original Pharmacist License No. RPH 27779 to Respondent. The license was in full force and effect at all relevant times. It will expire on April 30, 2008, unless renewed.

3. At the hearing, Respondent stipulated to the truth of the factual allegations contained in paragraphs 25, 26 and 27 of the Accusation. Those factual allegations are repeated verbatim below, and are incorporated as factual findings herein.

> 25. [¶] . . . [¶]
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> a. On or about August 3, 2004, at approximately 1400 hours, Respondent was observed by California Highway Patrol officers driving his vehicle [and] to swerve across lanes onto the dirt median and right shoulder avoiding several near collisions. Respondent failed field sobriety tests and was arrested. The contents of Respondent's vehicle were inventoried to include:
>
> 1) a bag marked "Soma" containing 48 pills and pieces of Soma, a controlled substance/dangerous drug,
>
> 2) a bag marked "Soma" containing 8 pills and pieces of Soma, a controlled substance/dangerous drug,
>
> 3) a bag marked "Vic" containing 110 pills and pieces of generic Vicodin, hydrocodone, a controlled substance/dangerous drug; and
>
> 4) an unmarked plastic pill bottle containing 39 mixed caplets and capsules of Probenecid and Amoxicillin, dangerous drugs.

Respondent admitted to taking the above medications from his places of employment.

Respondent's urine analysis tested positive for Lorazepam, a controlled substance and dangerous drug.

b. On or about October 18, 2004, in a criminal proceeding entitled *The People of the State of California v. Robert Dean Mix* in Santa Barbara County Superior Court, Lompoc Division, Case No. 1150822, Respondent was convicted on a plea of guilty and sentenced for violating Vehicle Code section 23152(a) (driving while under the influence of alcohol/drugs), a misdemeanor.

26. [¶] . . . [¶]

a. On or about August 3, 2004, Respondent was in possession of the controlled substances and/or dangerous drugs: Soma, generic Vicodin, Probenecid and Amoxicillin, without valid prescriptions, as set forth above in paragraph 25.

b. In or about July and/or August 2004, Respondent admittedly took possession of two Lorazepam tablets from his place of employment, without a valid prescription.

27. [¶] . . . [¶]

a. On or about August 3, 2004, with urine voided at approximately 1518 hours, Respondent's urine tested positive for Lorazepam.

b. On or about August 2, 2004, at approximately early am, Respondent admittedly ingested, albeit in error, Lorazepam, a controlled substance/dangerous drug, without a valid prescription.

c. On or about August 2, 2004, Respondent was observed at his place of employment, Vons [P]harmacy, to be uncoordinated, have slow movement, be drowsy, almost sleeping, and have slurred speech.

d. On or about August 2, 2004, Respondent was admitted to Arroyo Grande Community Hospital for drowsiness.

e. On or about August 2, 2004, at approximately 1122 hours, Respondent's blood tested positive for benzodiazepines (a property of Lorazepam), a controlled substance/dangerous drug.

4. Respondent's conviction was for a crime that is substantially related to the qualifications, functions and duties of a pharmacist pursuant to California Code of Regulations, title 16, section 1770.

5. As a result of his October 18, 2004 conviction for violating Vehicle Code section 23152, subdivision (a), Respondent was placed on unsupervised probation for a period of three years under various terms and conditions including the revocation of his driver's license for 90 days and payment of a fine of $1,600. He was also ordered to attend a three-month first offender's DUI program. Respondent completed the DUI program on May 10, 2005. The evidence did not disclose whether he has paid the fine.

6. On August 3, 2004, when he was stopped by California Highway Patrol officers, Respondent informed the arresting officer that he had taken his medications for his heart, high blood pressure and diabetes, but that he was feeling alright medically. However, he believed that someone had placed a substance into his drink in a bar two nights before.

7. There is no mention of such an incident in the medical history records from Arroyo Grande Community Hospital where Respondent was hospitalized the day before his arrest and discharged the day of his arrest. However, according to the Discharge Summary by Duc Nguyen, M.D., when a nurse came to Respondent's room the night before to give him his medications, Respondent informed the nurse that he had already taken them, even though nurses had earlier told Respondent he could not take any medication that had been brought from home. Dr. Nguyen believed those medications had been provided to Respondent by family members. Thus, Dr. Nguyen was unable to specify in his Discharge Summary what medications Respondent had taken the night before.

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8. On or about January 17, 2005, Respondent provided a written statement for the Board. Nowhere in that statement did Respondent make any mention of someone drugging his drink or even being in a bar two days before his arrest. Rather, Respondent described the incident as follows:

> First of all, this whole event was a ONE-TIME event that will never be repeated.
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> I had been suffering under a lot of financial and emotional pressures for several months due to a divorce, decreased work, etc. and was having difficulty sleeping.
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> I take herbal meds as well as Rx [prescription] meds for blood pressure, diabetes, prostate, vision, etc. I had taken a couple of Lorazepam 2 mg several weeks earlier and had not actually ingested them. I forgot they were in my pants pocket. My regular meds, which I had in a small plastic bag in my pocket, spilled out of the bag on the morning on 8/3/04. The motel room was dark and I just scooped everything out of my pocket and took it. This was an accidental ingestion.
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> I had breakfast and went to work. By the time I got to work, I was not myself. The technician on duty, who had worked with me many times before, recognized this and she called the manager in and I was taken to the hospital. I do not remember anything from the time I walked into the pharmacy until I awakened the following morning in the hospital (Arroyo Grande Hospital).
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> During my hospital stay, my ex-wife and daughter had come up to see me and found me at the hospital. They moved my car to the hospital parking lot.
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> When I awakened Tuesday morning, I was released from the hospital. During my drive home, I felt something was wrong. I intended to pull over at the Goleta rest stop and sleep but I was stopped before I reached that point. I am concerned that the hospital released me while I was still under the influence of the medication. This was a mistake which I believe was brought on by all the pressures in my life. My ex-wife and I have spoken since all this happened and she understands the gravity of it all and I have told her in no uncertain terms never to ask me again.
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> I take full responsibility for my actions in a time of great personal pressure. The financial pressure has been alleviated by the sale of a home which I inherited and the subsequent monies I have received. I have paid off all my bills except my car.

9. The evidence did not disclose what Respondent meant when he wrote in his statement to the Board that he told his former wife not to ask him again. However, in that statement, Respondent goes on to state:

> I have given the inspector a letter of reference that will attest to the quality of my work ethic. I realized from the start what a terrible mistake I was making. I truly love the profession of pharmacy and what I do on a day-to-day basis to help people with their ills, large and small. I sincerely feel that my counsel helps to comfort them and make them feel better in many ways. My father was a pharmacists and I am proud to have followed in his footsteps.
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> But sometimes, being human, we are weak and just get sucked in by our circumstances. The entire episode was entirely out of character for me. It has been a serious wake-up call for me, and as I said in the beginning, will never happen again

10. Since 2000, Respondent has been employed as a relief pharmacist for Von's/Sav-On. He is presently employed in that capacity for another pharmaceutical chain as well. Respondent described his position as a "floating pharmacist," meaning that he is not assigned to one single location, but rather is sent to various locations within the two companies. Therefore, while temporarily assigned, he has access to controlled substances and dangerous drugs at a number of different pharmacies operated by two separate companies. It was from one or both of those companies that Respondent took the Lorazepam he ingested and the other drugs that were found in his possession on the day of his arrest.

11. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board $6,258.75 for its costs of investigation and prosecution of the case.

12. The costs of prosecution include $1,058.50 for 7.25 hours spent by Deputy Attorney General Desiree Phillips during fiscal year 2005-2006. Except for pleading preparation, Ms. Phillips' tasks appear to overlap those of Deputy Attorney General King, the Deputy Attorney General who tried the case. Ms. Phillips' time for pleading preparation totals 5.25 hours which she billed at an hourly rate of $146 for a total of $766.50. The remaining $292 attributed to Ms. Phillips is disallowed.

13. Ms. King's cost declaration was signed on August 6, 2006. According to that declaration, Ms. King anticipated spending an additional eight hours on the case, prior to the hearing date, at an hourly rate of $158, for a total of $1,264. However, she spent only 2.75 hours on the case between August 6, 2006 and the hearing date. Therefore, $829.50 of Ms. King's requested costs (5.25 hrs. x $158/hr.) is disallowed.

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14. Complainant shall recover $5,137.25 for costs of investigation and prosecution.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 490, 4300, subdivision (a), and 4301, subdivision (l), for conviction of a crime substantially related to the qualifications, functions and duties of a pharmacist, as set forth in Findings 3, 4 and 5.

2. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, subdivision (j), on grounds of unprofessional conduct, for violating section 4060 and Health and Safety Code sections 11550, 11173, subdivision (a), and 11377, in that Respondent obtained, and was in possession of, controlled substances and dangerous drugs without valid prescriptions, as set forth in Findings 3, 6, 7 and 8.

3. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, subdivision (h), on grounds of unprofessional conduct, for violating Health and Safety Code section 11170, in that Respondent administered controlled substances/dangerous drugs to himself to the extent or in a manner as to be dangerous or injurious to himself, as set forth in Findings 3, 6, 7 and 8.

4. Cause does not exist to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, subdivision (a), and 4327, on grounds of unprofessional conduct, for violating Health and Safety Code section 11170. Although it was fortuitous that his co-worker discovered Respondent when Respondent was in an altered state, the discovery was made before Respondent started work. Therefore, Respondent did not practice pharmacy while under the influence of a dangerous drug, as set forth in Findings 3 and 8.

5. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, on grounds of unprofessional conduct, in that Respondent committed unprofessional acts which directly relate to the qualifications, functions and duties of a pharmacist, as set forth in Findings 3, 4, 5, 6, 7 and 8.

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6. Cause does not exist to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, subdivision (f), in conjunction with sections 475, subdivision (a)(3) and 480, subdivision (a)(2). Sections 475 and 480 are not applicable to this Accusation.

7. Cause exists to discipline Respondent's pharmacist license, pursuant to Business and Professions Code sections 4300, 4301, subdivision (p), and California Code of Regulations, title 16, section 1770, in that Respondent engaged in conduct that would have warranted denial of a license, as set forth in Findings 3, 4, 5, 6, 7 and 8.

8. Cause does not exist to discipline Respondent's pharmacist license, pursuant to Business and Professions Code section 480, subdivision (a)(3). Section 480 is not applicable to this Accusation.

9. Cause exists to order Respondent to pay costs claimed under Business and Professions Code section 125.3, as set forth in Findings 11, 12, 13 and 14.

10. No evidence was offered to show that Respondent has made any steps toward rehabilitation following his conviction.

11. Respondent argued that a probationary order is the proper discipline in this case because, after 34 years of licensure as a pharmacist, one day caused two days of problems. Although that may be true with respect to Respondent's purported mistake in taking Lorazepam, reporting for work, being hospitalized, being arrested for driving under the influence upon discharge from the hospital, and being convicted of the charged crime, it ignores a major factor in this case: Respondent admittedly took large quantities of Soma, a dangerous drug, Vicodin, a dangerous drug and Schedule III controlled substance, Probenecid, a dangerous drug, Amoxicillin, a dangerous drug, and Lorazepam tablets, a dangerous drug and Schedule IV controlled substance, from his places of employment. No evidence was offered to establish that Respondent was authorized to take those drugs.

12. Respondent's only argument in connection with those thefts was that no one ever complained that pills were missing from a pharmacy. That argument fails to respond to the issue. Respondent admitted the thefts, and no evidence was offered to show why he stole the drugs or how, as a licensed pharmacist, he can be trusted not to re-offend in the future.

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13. "Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (Citation.)" *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574 [146 Cal.Rptr. 653]. Given the above definition, the theft of dangerous drugs and controlled substances by a pharmacist from his place of employment represents the epitome of unprofessional conduct. Absent a compelling reason to the contrary, revocation is the proper discipline in this case. No such reason was offered.

14. Public protection is the sole purpose of an administrative disciplinary action. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1015; *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.) The public cannot be adequately protected should Respondent be permitted to maintain licensure at this time.

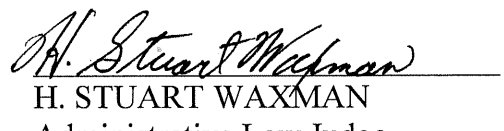
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. License number RPH 27779, issued to Respondent, Robert Dean Mix, is revoked pursuant to Legal Conclusions 1, 2, 3, 5 and 7, separately and together. Respondent shall relinquish his wall license and pocket renewal license to the Board within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of his revoked license for three years from the effective date of this decision.

2. Respondent shall pay to the board its costs of investigation and prosecution in the amount of $5,137.25 within 15 days of the effective date of this decision.

DATED: September 29, 2006



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:	Case No.: 2888
ROBERT DEAN MIX 23705 Vanowen Street #189 West Hills, CA 91307 -and- 7045 Scarborough Peak Drive West Hills, CA 91307-1212 Original Pharmacist License No. RPH 27779, Respondent.	OAH No.: L2006040756

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on November 30, 2006

IT IS SO ORDERED October 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

rfm

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

In the Matter of the Accusation Against:	Case No. 2888
ROBERT DEAN MIX 23705 Vanowen Street #189 West Hills, CA 91307 - and - 7045 Scarborough Peak Drive West Hills, CA 91307-1212 Pharmacist License No. RPH 27779 Respondent.	**A C C U S A T I O N**

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 July 14, 1972, the Board issued Pharmacist License No. RPH 27779 to Robert Dean Mix (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2006, unless renewed.

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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 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 renewed, 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 order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 4300(a) states that "[e]very 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 act 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 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued . A conviction within the meaning 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 has 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 4059(a) states:

"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."

11. 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, 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."

12. Section 4327 states:

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

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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 11173(a) states:

"(a) 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."

15. Health and Safety Code section 11350(a) states, in pertinent part:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, 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."

16. Health and Safety Code section 11377(a) states, in pertinent part:

"Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or 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."

17. Health and Safety Code section 11550(a) states, in pertinent part: "No person shall use, or be under the influence of any controlled substance . . ., except when

administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances."

18. 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."

19. 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

20 Lorazepam (Alzapam, Ativan, Loraz, Lorazepam Intensol) is an anti-anxiety agent (benzodiazepines, mild tranquilizer) used for the relief of anxiety. It is a Schedule IV controlled substance as defined in Health and Safety Code section 11057(d)(16) and a dangerous drug according to Business and Professions Code section 4022.

21. Soma, a brand name for carisoprodol, is a dangerous drug according to Business and Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and other measures for acute painful musculoskeletal conditions.

22. Vicodin is a trade name for the narcotic substance hydrocodone or dihydrocodeinone with the non-narcotic substance acetaminophen. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e), and is a dangerous drug within the meaning of Business and Professions Code section 4022.

23. Probenecid is a dangerous drug pursuant to Business and Professions Code section 4022.

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24. Amoxicillin is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(*Conviction of Substantially Related Crime*)

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

a. On or about August 3, 2004, at approximately 1400 hours, Respondent was observed by California Highway Patrol officers driving his vehicle to swerve across lanes onto the dirt median and right shoulder avoiding several near collisions. Respondent failed field sobriety tests and was arrested. The contents of Respondent's vehicle were inventoried to include:

1) a bag marked "Soma" containing 48 pills and pieces of Soma, a controlled substance/dangerous drug,

2) a bag marked "Soma" containing 8 pills and pieces of Soma, a controlled substance/dangerous drug,

3) a bag marked "Vic" containing 110 pills and pieces of generic Vicodin, hydrocodone, a controlled substance/dangerous drug; and

4) an unmarked plastic pill bottle containing 39 mixed caplets and capsules of Probenecid and Amoxicillin, dangerous drugs.

Respondent admitted to taking the above medications from his places of employment.

Respondent's urine analysis tested positive for Lorazepam, a controlled substance and dangerous drug.

b. On or about October 18, 2004, in a criminal proceeding entitled *The People of the State of California v. Robert Dean Mix* in Santa Barbara County Superior Court, Lompoc Division, Case No. 1150822, Respondent was convicted on a plea of guilty and

sentenced for violating Vehicle Code section 23152(a) (driving while under the influence of alcohol / drugs), a misdemeanor.

SECOND CAUSE FOR DISCIPLINE

(*Obtain/Unlawful Possession of Controlled Substances/Dangerous Drugs*)

26. Respondent is subject to disciplinary action pursuant to sections 4300(a) and 4301(j), on the grounds of unprofessional conduct, for violating section 4060 and Health and Safety Code sections 11350, 11173(a), and 11377, in that, Respondent obtained, and was in possession of, controlled substances and dangerous drugs without valid prescriptions, as follows:

a. On or about August 3, 2004, Respondent was in possession of the controlled substances and / or dangerous drugs: Soma, generic Vicodin, Probenecid and Amoxicillin, without valid prescriptions, as set forth above in paragraph 25.

b. In or about July and / or August 2004, Respondent admittedly took possession of two Lorazepam tablets from his place of employment, without a valid prescription.

THIRD CAUSE FOR DISCIPLINE

(*Self-Administration of Controlled Substances / Dangerous Drugs*)

27. Respondent is subject to disciplinary action under sections 4300(a) and 4301(h), on the grounds of unprofessional conduct, for violating Health and Safety Code section 11170, in that, Respondent administered controlled substances/dangerous drugs to himself to the extent or in a manner as to be dangerous or injurious to oneself, as follows:

a. On or about August 3, 2004, with urine voided at approximately 1518 hours, Respondent's urine tested positive for Lorazepam.

b. On or about August 2, 2004, at approximately early am, Respondent admittedly ingested, albeit in error, Lorazepam, a controlled substance / dangerous drug, without a valid prescription.

c. On or about August 2, 2004, Respondent was observed at his place of employment, Vons pharmacy, to be uncoordinated, have slow movement, be drowsy, almost sleeping, and have slurred speech.

/ / /

d. On or about August 2, 2004, Respondent was admitted to Arroyo Grande Community Hospital for drowsiness.

e. On or about August 2, 2004, at approximately 1122 hours, Respondent's blood tested positive for benzodiazepines (a property of Lorazepam), a controlled substance / dangerous drug.

FOURTH CAUSE FOR DISCIPLINE

(*Practicing While Under the Influence*)

28. Respondent is subject to disciplinary action under sections 4300(a) and 4327, on the grounds of unprofessional conduct, for violating Health and Safety Code section 11170, in that, Respondent practiced nursing while under the influence a dangerous drug as set forth in paragraph 27 above.

FIFTH CAUSE FOR DISCIPLINE

(*Unprofessional Conduct*)

29. Respondent is subject to disciplinary action under sections 4300(a) and 4301, on the grounds of unprofessional conduct, in that on or between August 2, 2004 and October 18, 2004, Respondent committed unprofessional acts which directly relate to the qualifications, functions, and duties of a pharmacist, as set for above in paragraphs 25, 26 and 27.

SIXTH CAUSE FOR DISCIPLINE

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

30. Respondent is subject to disciplinary action under sections 4300 and 4301(f), in conjunction with sections 475(a)(3) and 480(a)(2), in that, on or between August 2, 2004 and October 18, 2004, Respondent committed acts involving moral turpitude, dishonesty, fraud and deceit, as set forth above in paragraphs 25 through 27, inclusive.

SEVENTH CAUSE FOR DISCIPLINE

(*Conduct Warranting Denial of Licensure*)

31. Respondent is subject to disciplinary action under sections 4300, 4301(p), and 480(a)(3), and California Code of Regulations, title 16, section 1770, in that, on or between August 2, 2004 and October 18, 2004, Respondent engaged in conduct that would have

warranted denial of a license, as set forth above in paragraphs 25 through 27, inclusive.

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 27779, issued to Robert Dean Mix.

B. Ordering Robert Dean Mix 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: 3/13/06

P. F. Harris

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

Complainant

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