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

In the Matter of the Accusation Against:	
LOREN C. RIRIE,	Case No. 3116
Pharmacist License No. RPH 40583	OAH No. 2008040056
Respondent.	

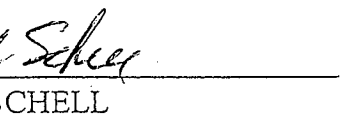
DECISION

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 October 3, 2008.

IT IS SO ORDERED September 3, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
KENNETH H. SCHELL
Board President

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	
LOREN C. RIRIE,	Case No. 3116
Pharmacist License No. RPH 40583	OAH No. 2008040056
Respondent.	

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 3, 2008.

Joshua A. Room, Deputy Attorney General, represented complainant.

Robert W. Stewart, Attorney at Law, represented respondent who was present.

Submission of the matter was deferred to June 20, 2008, for receipt of further evidence, which was received, marked for the record, and considered as administrative hearsay. The matter was submitted on June 20, 2008.

FACTUAL FINDINGS

1. Virginia Herold made the accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On December 17, 1986, the Board issued Pharmacist License Number RPH 40583 to Loren C. Ririe (respondent). The license was in full force and effect at all times relevant to the charges brought against respondent and will expire on August 31, 2008, unless renewed.

3. A number of controlled substances and/or dangerous drugs are referred to in this decision. They include Norco, Lortab and Vicodin (hydrocodone with APAP), narcotic analgesic drugs; Dilaudid (hydromorphone hydrochloride), a narcotic analgesic drug; Morphine, a narcotic opiate drug; and Demerol (meperidine hydrochloride), a narcotic analgesic drug.

4. Beginning in August 2006 and until about March 8, 2007, respondent was employed as a pharmacist at a Longs Drug Store (PHY 13146; Longs #32) in Novato, California, and in that capacity was involved in selling and dispensing dangerous drugs/controlled substances.

5. By his own admission, between October 2006 and March 2007, respondent stole from the Longs Drug Store stock, for his own use, controlled substances and/or dangerous drugs including numerous types and strengths of hydrocodone-containing controlled substances. While on duty as a pharmacist, respondent self-administered the controlled substances/dangerous drugs.

6. Though the exact total quantity of drugs stolen and self-administered by respondent is not known, respondent admitted that his theft of drugs from Longs increased over time, to the point that he was regularly stealing, and self-administering 12 to 20 pills per day for each day he worked at the pharmacy. An audit subsequently performed by Longs Drug compliance staff for the period of November 16, 2006, to March 4, 2007, revealed total losses of 3,880 tablets of hydrocodone-containing products from Longs #32 during that period. It was not established exactly how many of those losses can be attributed to respondent. Respondent also admitted that on February 28, 2007, respondent stole five tablets of hydromorphone (Dilaudid) from Longs #32 and self-administered the drug at home. Long's audit confirmed the loss of five tables of hydromorphone from the Longs #32 drug stock.

7. In an interview with a Board investigator, respondent further admitted that he first began experimenting with drugs, particularly opiates, in 1986 or 1987, and that on several prior occasions over the intervening 20 years, including in 1987, 1988, 1989, between 1995 and 1998, and between 2001 and 2006, he diverted from employers' stock and self-administered controlled substances/dangerous drugs, including hydrocodone drugs, morphine, and Demerol.

8. It was established by clear and convincing evidence that respondent committed numerous acts involving moral turpitude, dishonesty, fraud, deceit and corruption when he stole controlled substances/dangerous drugs from his employer.

9. Respondent repeatedly furnished and administered to himself, without valid prescriptions, controlled substances and/or dangerous drugs.

10. Respondent possessed controlled substances and dangerous drugs, without a valid prescription.

11. Respondent was under the influence of controlled substances/dangerous drugs while selling or dispensing drugs.

12. Respondent obtained unknown quantities of controlled substances/dangerous drugs, by fraud, deceit, misrepresentation, subterfuge, and concealment of material facts.

13. Respondent possessed certain identified controlled substances, without valid prescriptions.

14. Respondent used or was under the influence of certain identified controlled substances, not administered by or under the direction of an authorized licensee.

15. Respondent engaged in unprofessional conduct. It should be noted that all of the violations are based on the same set of facts.

16. Respondent has a long history of drug addiction. Respondent was subject to prior discipline by the Board. On February 24, 1990, respondent was placed on probation for five years on terms and conditions including a 30-day suspension, his mandatory participation in the Impaired Pharmacists Program, and fluid/drug testing, based on respondent's admission to repeated diversion of controlled substances from his employer and self administration of the drugs. Respondent was convicted in 1989 of three misdemeanors for his drug offenses.

17. Respondent was disciplined by the Board again on November 14, 1991. His probation was extended for an additional five years, with added terms requiring one year suspension and supervision of his practice based on diversion of controlled substances from an employer and self-use in 1990. On November 30, 1993, the Board denied a petition for reduction in penalty. Respondent requested that the Board eliminate from the terms of his probation a prohibition that he not have access to controlled substances and a requirement that he be supervised by another pharmacist. On July 27, 1995, the Board granted a second petition for reduction of penalty filed by respondent wherein the Board eliminated the term prohibiting his access to controlled substances; and a term requiring that he practice only under the "full supervision" of another licensed pharmacist was modified to permit respondent to practice under the "partial supervision" of another pharmacist.

18. Cost recovery in the amount of $6,182.25 has been requested by Complainant for the investigation and prosecution of this matter. That amount is reasonable.

19. Respondent has a renewed commitment to his recovery. He is attending the Maximus recovery group for health care professionals twice a week. Respondent joined the group over one year ago (June 2007). Respondent's treating psychologist from the Maximus program testified on respondent's behalf at the hearing. Respondent is taking naltrexone (an opioid antagonist). The psychologist is impressed with respondent's integration of the principles of recovery in his daily life and recommends respondent be allowed to keep his pharmacist license provided he continues to attend the pharmacist diversion program. Respondent has been attending AA meetings (two to three meetings per day) regularly. From April 25, 2007, to May 23, 2007, respondent attended an in-patient program – Serenity Knolls, in Forest Knolls, California. Respondent continues to attend aftercare regularly.

20. Respondent also presented three character reference letters. All of respondent's references are impressed by his dedication to his recovery.

21. Respondent's AA sponsor testified on his behalf at the hearing. He also acted as respondent's work-site monitor during respondent's last relapse. Respondent's sponsor believes that respondent finally understands that "there has to be something better."

22. While respondent's addiction has been difficult for him to control, he is making a renewed effort to conquer his addiction. Respondent's rehabilitation efforts warrant another opportunity to work with the Board's diversion program and probation monitor to demonstrate that he can overcome his addiction. The public's protection is paramount. The terms and conditions set forth below are sufficient to assure that the public will not be in jeopardy while respondent continues to recover from his addiction.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 through 15, cause for disciplinary action exists pursuant to Business and Professions Code sections 4301, subdivision (f) (acts involving dishonesty); Business and Professions Code section 4301, subdivisions (h), (j), and (o), as they relate to Business and Professions Code section 4059 and Health and Safety Code section 11170 (unlawful self-administration of a controlled substance); Business and Professions Code section 4301, subdivisions (j) and (o), and Business and Professions Code section 4060 (unlawful possession of controlled substances); Business and Professions Code section 4301, subdivision (j) and (o), and Business and Professions Code section 4327 (working while under the influence); Business and Professions Code section 4301, subdivisions (j) and (o), and Health and Safety Code section 11173, subdivision (a) (obtaining controlled substance by fraud); Business and Professions Code section 4301, subdivisions (j) and (o), as they relate to Health and Safety Code section 11530 (unlawful possession of controlled substances); Business and Professions Code section 4301, subdivisions (j) and (o), and Health and Safety Code section 11550 (unlawful use of narcotic controlled substances); and Business and Professions Code section 4301 (unprofessional conduct).

2. By reason of the matters set forth in Finding 18, cost recovery in the amount $6,182.25 is reasonable and appropriate pursuant to Business and Professions Code section 125.3.

3. The matters in aggravation as set forth in Finding 16 and 17 have been considered in making the following order. Respondent has had significant prior disciplinary action.

4. The matters in rehabilitation, extenuation and mitigation set forth in Findings 19, 20, 21 and 22, have been considered in making the following order.

ORDER

Pharmacist license number RPH 40583, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for seven years upon the following terms and conditions:

1. Obey All Laws -

   Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

   Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

   - an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
   - a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
   - a conviction of any crime
   - discipline, citation, or other administrative action filed by any state and federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

2. Reporting to the Board

   Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

3. Interview with the Board

   Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

4. Cooperation with Board Staff

   Respondent shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance with the

terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

6. Notice to Employers

Respondent shall notify all present and prospective employers of the decision in Pharmacy Board case number 3116 and the terms, conditions and restrictions imposed on respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the board in writing acknowledging the employer has read the decision in Pharmacy Board case number 3116.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms and conditions of the decision in Pharmacy Board case number 3116 in advance of the respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the respondent is considered an employee or independent contractor.

7. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant

Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

8. Reimbursement of Board Costs

Respondent shall pay to the board its costs of investigation and prosecution in the amount of $6,182.25. Respondent shall make said payments as directed by the board or its designee

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

10. Status of License

Respondent shall, at all times while on probation, maintain an active current license with the board, including any period during which suspension or probation is tolled. If respondent's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender while on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

12. Notification of Employment/Mailing Address Change

Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

13. Tolling of Probation

Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of hours set by the board or its designee per calendar month in California, respondent must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice

of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

Respondent shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a violation of probation. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition.

14. Violation of Probation

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

15. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

16. Restricted Practice

Respondent's practice of pharmacy shall be restricted to as specified by the board or its designee for as many years of probation as required by the board

or its designee. Respondent shall submit proof satisfactory to the board of compliance with this term of probation.

17. Examination

Respondent shall take and pass any sections of the pharmacist licensure examination as scheduled by the board after the effective date of this decision at respondent's own expense. If respondent fails to take and pass the examination within six months after the effective of this decision, respondent shall be suspended from practice upon written notice. Respondent shall not resume the practice of pharmacy until he takes and passes the same section(s) at a subsequent examination and is notified, in writing, that he has passed the examination.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until respondent passes the examination and is notified in writing.

18. Mental Health Examination

Within 30 days of the effective date of this decision, and on a periodic basis as may be required by the board, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved psychiatrist or psychologist. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the

respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board.

If the psychiatrist or psychotherapist recommends, and the board directs. respondent shall undergo psychotherapy. Respondent shall, within 30 days of written notice of the need for psychotherapy, submit to the board for its prior approval, the recommended program for ongoing psychotherapeutic care. Respondent shall undergo and continue psychotherapy, at respondent's own expense, until further notice from the board. Respondent shall have the treating psychotherapist or psychiatrist submit written quarterly reports to the board as directed. If respondent is determined to be unable to practice safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the board.

Commencing on the effective date of this decision, respondent shall not engage in the practice of pharmacy until notified in writing by the board that respondent is psychologically fit to practice pharmacy safely, and the board approves said recommendation. During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

If recommended by the psychiatrist or psychotherapist and approved by the board, respondent shall be suspended from practicing pharmacy until the treating psychotherapist recommends, in writing, stating the basis therefore, that respondent can safely practice pharmacy, and the board approves said recommendation.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug

retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

19. Psychotherapy

Within 30 days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a licensed mental health practitioner of respondent's choice. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the board for its prior approval.

Therapy shall be at least once a week unless otherwise determined by the board. Respondent shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the board. If the treating therapist finds that respondent cannot practice safely or independently, the therapist shall notify the board immediately by telephone and followed up by written letter within three working days.

Upon approval of the licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist and at respondent's own expense, until the board deems that no further psychotherapy is necessary. The board may require respondent to undergo a mental health evaluation(s) by a board-appointed or board-approved licensed mental health practitioner.

20. Rehabilitation Program - Pharmacists Recovery Program (PRP)

Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing. The board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

21. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the board. At all times respondent shall fully cooperate with the board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

22. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the respondent. Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs.

23. Supervised Practice

Respondent shall practice only under the supervision of a pharmacist not on probation with the board. Respondent shall not practice until the supervisor is approved by the board. The supervision shall be, as required by the board, either:

Continuous - 75% to 100% of a work week
Substantial - At least 50% of a work week
Partial - At least 25% of a work week
Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within 30 days of the effective date of this decision, respondent shall have his supervisor submit notification to the board in writing stating the supervisor has read the decision in Pharmacy Board case number 3116 and is familiar with the level of supervision as determined by the board. If respondent changes employment, respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in Pharmacy Board case number 3116 and is familiar with the level of supervision as determined by the board.

Within 10, days of leaving employment, respondent shall notify the board in writing.

24. No Supervision

Respondent shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the board.

25. No Ownership of Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board.

26. Separate File of Records

Respondent shall maintain a separate file of all records pertaining to the acquisition or disposition of all controlled substances.

27. Report of Controlled Substances

Respondent shall submit quarterly reports to the board the total acquisition and disposition of such controlled substances as the board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than 10 days following the end of the reporting period.

28. No Access to Controlled Substances

Respondent shall not order, possess, dispense or otherwise have access to any controlled substance(s) in Schedule II, III, IV or V (Health and Safety Code sections 11055-11058 inclusive). Respondent shall not order, receive or retain any triplicate prescription forms.

29. Tolling of Suspension

If respondent leaves California to reside or practice outside this state, for any period exceeding 10 days (including vacation), respondent must notify the board in writing of the dates of departure and return. Periods of residency or practice outside the state - or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period. Respondent shall not practice pharmacy upon returning to this state until notified by the board that the period of suspension has been completed.

DATED: 7/7/08

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: LOREN C. RIRIE 126 Pelican Lane Novato, CA 94949 Pharmacist License No. RPH 40583 Respondent.	Case No. 3116 OAH No. **ACCUSATION**

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 December 17, 1986, the Board of Pharmacy issued Pharmacist License Number RPH 40583 to Loren C. Ririe (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, 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.

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 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

STATUTORY 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 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.

8. 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.

9. 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.

10. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell, dispense or compound any drug while under the influence of a dangerous drug or alcohol.

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.

14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

16. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

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

. . .

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

17. **Norco, Lortab** and **Vicodin** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022. In generic form, these drugs may also be known as **hydrocodone with APAP**. These are narcotic analgesic drugs.

18. **Dilaudid** is a brand of **hydromorphone hydrochloride**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(K) and a dangerous drug as defined by Code section 4022. It is a narcotic analgesic.

19. **Morphine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic opiate drug.

20. **Demerol** is a brand of **meperidine hydrochloride**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17) and a dangerous drug as designated by Code section 4022. It is a narcotic analgesic.

COST RECOVERY

21. 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.

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FACTUAL BACKGROUND

22. Beginning in or about August 2006 and until on or about March 8, 2007, Respondent was employed as a pharmacist at a Longs Drug Store (PHY 13146; Longs # 32) in Novato, California, and in that capacity was involved in selling/dispensing dangerous drugs.

23. By his own admission, between in or about October 2006 and March 2007, on unknown exact dates and in unknown exact quantities, Respondent took/stole from the Longs Drug Store stock, for his own use, controlled substances or dangerous drugs including numerous types and strengths of **hydrocodone**-containing controlled substances. While on duty as a pharmacist, Respondent ingested/self-administered the controlled substances/dangerous drugs.

24. Though the exact total quantity of drugs stolen and self-administered by Respondent is not known, Respondent admitted that his "chipping" (theft) of drugs from Longs increased over time, to the point that he was regularly stealing, and ingesting, at least 12-20 pills per day that he was working in the pharmacy. An audit subsequently performed by Longs Drug compliance staff for the period from November 16, 2006 to March 4, 2007 revealed total losses of 3,880 tablets of **hydrocodone**-containing products from Longs # 32 during that period. In addition, Respondent admitted that on or about February 28, 2007, he stole from Longs # 32, and self-administered at home, 5 tablets of **hydromorphone (Dilaudid)**. The Longs audit confirmed the loss of 5 tablets of **Dilaudid/hydromorphone** from the Longs # 32 drug stock.

25. In an interview with a Board of Pharmacy investigator, Respondent further admitted that he first began experimenting with drugs, particularly opiates, in 1986 or 1987, and that on several prior occasions over the intervening twenty years, including in 1987, 1988, 1989, between 1995 and 1998, and between 2001 and 2006, he diverted from employer stock and self-administered controlled substances, including **hydrocodone** drugs, **morphine**, and **Demerol**.

FIRST CAUSE FOR DISCIPLINE

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

26. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 22-25 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of a Controlled Substance)

27. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 22-25 above, repeatedly furnished and/or administered to himself, without valid prescription, controlled substances and/or dangerous drugs.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 22-25 above, possessed controlled substances and/or dangerous drugs, without a valid prescription.

FOURTH CAUSE FOR DISCIPLINE

(Working While Under the Influence)

29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or section 4327 of the Code, in that Respondent, as described in paragraphs 22-25 above, was under the influence of controlled substances while selling or dispensing drugs.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 22-25 above, obtained unknown quantities of controlled substances, by fraud, deceit, misrepresentation, subterfuge, or concealment of material fact.

SIXTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 22-25 above, Respondent possessed certain identified controlled substances, without valid prescription.

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SEVENTH CAUSE FOR DISCIPLINE

(Unlawful Use of Narcotic Controlled Substances)

32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that, as described in paragraphs 22-25 above, Respondent used or was under the influence of certain identified controlled substances, not administered by or under the direction of an authorized licensee.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

33. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 22-32 above, engaged in unprofessional conduct.

DISCIPLINE CONSIDERATIONS

34. To determine the degree of discipline, if any, to be imposed hereunder on Respondent, Complainant alleges that on or about February 24, 1990, pursuant to a Stipulation, Decision and Order in a prior disciplinary action titled *In the Matter of the Accusation Against Loren C. Ririe*, Case No. 1457 before the Board of Pharmacy, Respondent's license was placed on probation for five (5) years on terms and conditions including a thirty (30) day suspension, his mandatory participation in the Impaired Pharmacists Program, and fluid/drug testing, based on Respondent's admissions to repeated diversion(s) of controlled substances from his employer(s) during 1988 for self-use, and his 1989 convictions (three misdemeanors) for two such occasions. That decision is now final and is incorporated by reference as if fully set forth.

35. To determine the degree of discipline, if any, to be imposed hereunder on Respondent, Complainant also alleges that on or about November 14, 1991, pursuant to another Stipulation, Decision, and Order in another prior disciplinary action titled *In the Matter of the Accusation and Petition to Revoke Probation Against Loren C. Ririe*, Case No. 1535 before the Board of Pharmacy, the probation on Respondent's license was extended for a further five (5) years, with added terms including a one (1) year suspension and supervision of his practice, due to additional acts of diversion of controlled substances from an employer and self-use in 1990. That decision is now final and is incorporated by reference as if fully set forth.

36. To determine the degree of discipline, if any, to be imposed hereunder on Respondent, Complainant also alleges that effective on or about November 30, 1993, the Board denied a petition for reduction of penalty filed by Respondent on or about April 14, 1993 wherein he requested that the Board eliminate from the terms of his probation a prohibition on him having access to controlled substances and a requirement that he be supervised by another pharmacist.

37. To determine the degree of discipline, if any, to be imposed hereunder on Respondent, Complainant also alleges that effective on or about July 27, 1995, the Board granted a second petition for reduction of penalty filed by Respondent on or about April 18, 1995, to the effect that the following modifications were made to the terms and conditions of his probation: (a) the Board eliminated the term prohibiting his access to controlled substances; and (b) a term requiring that he practice only under the "full supervision" of another licensed pharmacist was modified to permit Respondent to practice under the "partial supervision" of another pharmacist.

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 Number 40583, issued to Loren C. Ririe (Respondent);

B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 11/7/07

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

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