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

Case No. 3749

In the Matter of the Accusation Against:

DEFAULT DECISION AND ORDER

**JEMAL ZENUNI
3687 4th Avenue, #515
San Diego, CA 92103**

[Gov. Code, §11520]

Pharmacist License No. RPH 57261

Respondent.

FINDINGS OF FACT

1. On or about May 9, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3749 against Jemal Zenuni (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 3, 2005, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 57261 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, 2012, unless renewed.

3. On or about May 12, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3749, Statement to Respondent, blank Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 4100, is required to be reported and maintained with the Board, which was and is: 3687
2 4th Avenue, #515, San Diego, CA 92103.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. On or about June 8, 2011, the domestic return receipt reflecting service of the
7 aforementioned documents by Certified Mail was returned by the U.S. Postal Service and was
8 signed by Respondent.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 3749.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 3749, finds that
28 the charges and allegations in Accusation No. 3749, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$6,851.50 as of June 7, 2011.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Jemal Zenuni has subjected his
6 Pharmacist License No. RPH 57261 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
9 based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Evidence Packet in this case.:

11 a. Respondent is subject to disciplinary action under Business and Professions
12 Code section 4301(h) in that he administered to himself controlled substances, namely
13 hydrocodone/APAP, while performing his functions as a pharmacist at Walgreens.

14 b. Respondent is subject to disciplinary action for unprofessional conduct under
15 Business and Professions Code section 4301(o) in that while on duty at Walgreens, Respondent
16 filled and dispensed prescriptions to Walgreen's customers while under the influence of
17 controlled substances in violation of the Pharmacy Act, including Business and Professions Code
18 section 4327, as evidenced by his admissions and his conduct.

19 c. Respondent is subject to disciplinary action under Business and Professions
20 Code section 4301(j) in that he violated the California Uniform Controlled Substances Act
21 (Health and Safety Code sections 11170, 11171, and 11173(a)).

22 d. Respondent is subject to disciplinary action under Business and Professions
23 Code section 4301(f) in that he committed an act involving dishonesty or deceit, namely,
24 Respondent admitted that he stole controlled substances from his employer, Walgreens.

25 e. Respondent is subject to disciplinary action under Business and Professions
26 Code sections 490 and 4301(l) in that on or about March 8, 2010, in a criminal proceeding
27 entitled *The People of the State of California v. Jemal Zenuni*, in San Diego County Superior
28 Court case number M089783, Respondent was convicted of violation of Vehicle Code section

1 23152(b), driving with a blood alcohol content of .08 percent or more, a misdemeanor crime that
2 is substantially related to the qualifications, functions and duties of pharmacist.

3 f. Respondent is subject to disciplinary action under Business and Professions
4 Code section 4301(h) in that Respondent used alcohol to an extent or in a manner dangerous to
5 himself or others on August 17, 2009.

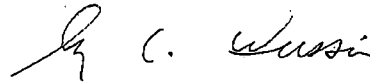
6 **ORDER**

7 IT IS SO ORDERED that Pharmacist License No. RPH 57261, heretofore issued to
8 Respondent Jemal Zenuni, is revoked.

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

13 This Decision shall become effective on November 17, 2011.

14 It is so ORDERED October 18, 2011.

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STANLEY C. WEISSER, BOARD PRESIDENT
18 FOR THE BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS

20 80512793.DOC
21 DOJ Matter ID:SD2010703345

22 Attachment:
23 Exhibit A: Accusation
24
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27
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3749

12 **JEMAL ZENUNI**
13 **3687 4th Avenue, #515**
14 **San Diego, CA 92103**

A C C U S A T I O N

15 **Pharmacist License No. RPH 57261**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 3, 2005, the Board of Pharmacy issued Pharmacist License
24 Number RPH 57261 to Jemal Zenuni (Respondent). The Pharmacist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on September 30,
26 2012, unless renewed.
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28

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or
6 revoked.”

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
9 disciplinary action during the period within which the license may be renewed, restored, reissued
10 or reinstated.

STATUTORY AND REGULATORY PROVISIONS

11
12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24
25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or
27 to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4059 of the Code provides in part that a person may not furnish any
6 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 10. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that furnished to a
12 person upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
14 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
15 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
16 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
17 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
18 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
19 section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

20 Nothing in this section authorizes a certified nurse-midwife, a nurse
21 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

22 11. Section 4301 of the Code states:

23 The board shall take action against any holder of a license who is guilty of
24 unprofessional conduct or whose license has been procured by fraud or
25 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
26 not limited to, any of the following:

27 (f) The commission of any act involving moral turpitude, dishonesty,
28 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.

1
2 (h) The administering to oneself, of any controlled substance, or the use of any
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

7
8
9 (j) The violation of any of the statutes of this state, or any other state, or of
10 the United States regulating controlled substances and dangerous drugs.

11
12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
14 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction
18 shall be conclusive evidence only of the fact that the conviction occurred. The
19 board may inquire into the circumstances surrounding the commission of the
20 crime, in order to fix the degree of discipline or, in the case of a conviction not
21 involving controlled substances or dangerous drugs, to determine if the conviction
22 is of an offense substantially related to the qualifications, functions, and duties of a
23 licensee under this chapter. A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is deemed to be a conviction within the meaning of this
25 provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting
27 probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

29
30 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
31 abetting the violation of or conspiring to violate any provision or term of this chapter
32 or of the applicable federal and state laws and regulations governing pharmacy,
33 including regulations established by the board or by any other state or federal
34 regulatory agency.

35 12. Section 4327 of the Code states that:

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

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

3 14. Health and Safety Code section 11171 provides that no person shall prescribe,
4 administer, or furnish a controlled substance except under the conditions and in the manner
5 provided by this division.

6 15. Health and Safety Code section 11173(a) provides that no person shall obtain or
7 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
8 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
9 (2) by the concealment of a material fact.

10 16. California Code of Regulations, title 16, section 1769, states:

11

12 (b) When considering the suspension or revocation of a facility or a
13 personal license on the ground that the licensee or the registrant has been
14 convicted of a crime, the board, in evaluating the rehabilitation of such person and
15 his present eligibility for a license will consider the following criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with all terms of parole, probation,
20 restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

23 For the purpose of denial, suspension, or revocation of a personal or facility
24 license pursuant to Division 1.5 (commencing with Section 475) of the Business
25 and Professions Code, a crime or act shall be considered substantially related to
26 the qualifications, functions or duties of a licensee or registrant if to a substantial
27 degree it evidences present or potential unfitness of a licensee or registrant to
28 perform the functions authorized by his license or registration in a manner
consistent with the public health, safety, or welfare.

1 c. Respondent admitted in a July 27, 2010 written statement to the Board's
2 investigator that on or about February 20 or 21, 2010, before commencing his shift, he took "a
3 Vicodin tablet to help with pain in my legs and a broken nose. I might have been a little bit loopy
4 upon arriving."

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct-Violations of the Chapter)**

7 21. Respondent is subject to disciplinary action for unprofessional conduct under section
8 4301(o) of the Code in that while on duty at Walgreens, Respondent filled and dispensed
9 prescriptions to Walgreen's customers while under the influence of controlled substances in
10 violation of the Pharmacy Act, including Code section 4327, as evidenced by his admissions and
11 his conduct as set forth in paragraph 20 above, incorporated herein by reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

14 22. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
15 Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code
16 sections 11170, 11171, and 11173(a)) as set forth in paragraph 20 above, incorporated herein by
17 reference.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Commission of Acts Involving Dishonesty or Deceit)**

20 23. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
21 Respondent committed an act involving dishonesty or deceit, namely, Respondent admitted that
22 he stole controlled substances from his employer, as is set forth in paragraph 20 above,
23 incorporated herein by reference.

1 FIFTH CAUSE FOR DISCIPLINE

2 (March 8, 2010 Conviction for DUI on August 17, 2009)

3 24. Respondent is subject to disciplinary action under sections 490 and 4301(1) of the
4 Code in that he was convicted of crime that is substantially related to the qualifications, duties,
5 and functions of a pharmacist. The circumstances are as follows:

6 a. On or about March 8, 2010, in a criminal proceeding entitled *The People of the*
7 *State of California v. Jemal Zenuni*, in San Diego County Superior Court case number M089783,
8 Respondent was convicted on his plea of guilty for violation of Vehicle Code section 23152(b),
9 driving with a blood alcohol content of .08 percent or more, a misdemeanor.

10 b. As a result of his conviction, Respondent was placed on summary probation
11 for 5 years, ordered to pay all applicable fines, fees and restitution, to enroll and complete a nine
12 month First Offender Alcohol Program and to attend a MADD Victim Impact Panel.

13 c. The circumstances that led to the conviction were that on or about August 17,
14 2009, the San Diego Police Department was dispatched to the intersection of Lamont Street and
15 Garnet Avenue in San Diego, California, to investigate a report of a possible drunk driver and a
16 single vehicle collision. When a police officer arrived at the intersection, he observed
17 Respondent's vehicle located at the northeast corner of the intersection, on the sidewalk with the
18 front of the vehicle against the traffic signal pole. He further observed Respondent sitting in the
19 driver's seat of that vehicle, smelled the strong odor of an alcoholic beverage in the vehicle and
20 discovered a large bottle of Ketel One Vodka about one quarter full in the vehicle. He also noted
21 that Respondent's eyes were blood shot and glassy, his speech was slurred and there was a strong
22 odor of an alcoholic beverage emanating from his breath. As he exited his vehicle, Respondent
23 stumbled and could not maintain his balance. Respondent's breath tests resulted in a .41 percent
24 and a .41 percent blood alcohol content (BAC).

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SIXTH CAUSE FOR DISCIPLINE

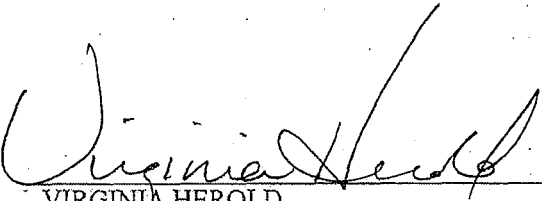
(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)

25. Respondent is subject to disciplinary action under section 4301(h) of the Code in that Respondent used alcohol to an extent or manner that was dangerous to himself or others on August 17, 2009, as is set forth above in paragraph 24, incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacist License Number RPH 57261, issued to Jemal Zenuni;
- 2. Ordering Jemal Zenuni 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;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/9/11 

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

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