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

10 In the Matter of the Accusation Against:

Case No. 3753

11 **JOHN STOCKER**
12 **55640 Verbenia Avenue**
13 **White Water, CA 92282**
14 **Pharmacist License No. RPH 46011**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520].

15 Respondent.

16
17 FINDINGS OF FACT

18 1. On or about February 3, 2011, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 3753 against John Stocker (Respondent) before the Board of Pharmacy.

21 (Accusation attached as Exhibit A.)

22 2. On or about March 19, 1993, the Board of Pharmacy (Board) issued Pharmacist
23 License No. RPH 46011 to Respondent. The Pharmacist License expired on July 31, 2010, and
24 has not been renewed.

25 3. On or about February 16, 2011, Respondent was served by Certified and First Class
26 Mail copies of the Accusation No. 3753, Statement to Respondent, Notice of Defense, Request
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 4100 and 16 C.C.R. § 1704, is required to be reported and maintained with the Board,
2 which was and is: P.O. Box 521 Cabazon, CA 92230.

3 4. A second attempt was made on or about March 25, 2011, to serve the Accusation No.
4 3753, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery
5 Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's residence
6 address: 55640 Verbenia Avenue in White Water, CA 92282.

7 3. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 4. On or about February 16, 2011, the aforementioned first attempt to serve documents
11 by both Certified Mail and First Class Mail were returned by the U.S. Postal Service marked
12 "Moved left no address." The address on the documents was the same as the address on file with
13 the Board. Respondent failed to maintain an updated address with the Board and the Board has
14 made attempts to serve the Respondent at the address on file. Respondent has not made himself
15 available for service and therefore, has not availed himself of his right to file a notice of defense
16 and appear at hearing.

17 5. On or about March 25, 2011, the aforementioned second attempt to serve documents
18 by Certified Mail and First Class Mail was made to Respondent at the only known home address
19 of 55640 Verbenia Avenue in White Water, California 92282. This attempt was neither returned
20 nor responded to by Respondent.

21 5. Government Code section 11506 states, in pertinent part:

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

27 5. Respondent failed to file a Notice of Defense within 15 days after service upon him
28 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3753.

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

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

5 7. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondent is in default. The Board will take action without further hearing and, based on the
7 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
8 taking official notice of all the investigatory reports, exhibits and statements contained therein on
9 file at the Board's offices regarding the allegations contained in Accusation No. 3753, finds that
10 the charges and allegations in Accusation No. 3753, are separately and severally, found to be true
11 and correct by clear and convincing evidence.

12 8. Taking official notice of its own internal records, pursuant to Business and
13 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
14 and Enforcement is \$1,587.50 as of May 10, 2011.

15 DETERMINATION OF ISSUES

16 1. Based on the foregoing findings of fact, Respondent John Stocker has subjected his
17 Pharmacist License No. RPH 46011 to discipline.

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

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

22 a. Business and Professions Code section 4301(h) Unprofessional Conduct, DUI July 2,
23 2008; Unprofessional Conduct, DUI December 28, 2008; Unprofessional
24 Conduct, DUI March 11, 2009; Unprofessional Conduct, DUI July 28, 2009.

25 b. Citation CI 2009-43004 issued on or about May 4, 2010, for a variety of violations in
26 2009 which Respondent committed while employed as a pharmacist-in-charge
27 of a K-Mart Pharmacy. Respondent has failed to pay the fine.
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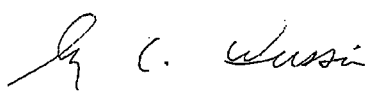
ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 46011, heretofore issued to Respondent John Stocker, is revoked.

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

This Decision shall become effective on October 27, 2011.

It is so ORDERED September 27, 2011.



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

80498916.DOC
DOJ Matter ID:SD2010703340

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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3 WILLIAM A. BUSS
Deputy Attorney General
4 State Bar No. 134958
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8

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

12 In the Matter of the Accusation Against:

Case No. 3753

13 **JOHN STOCKER**
14 **P. O. Box 521**
15 **Cabazon, CA 92230**

A C C U S A T I O N

16 **Pharmacist License No. RPH 46011**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 19, 1993, the Board of Pharmacy issued Pharmacist License
23 Number RPH 46011 to John Stocker (Respondent). The Pharmacist License expired on July 31,
24 2010, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a) of the Code states that "Every license issued may be
2 suspended or revoked."

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

7 STATUTORY PROVISIONS

8 6. Section 4022 of the Code states:

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

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

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

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

16 7. Section 4301 of the Code states:

17 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
18 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

19

20 (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
21 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
22 the person to conduct with safety to the public the practice authorized by the license.

23

24 DRUGS

25 8. Hydromorphone is a Schedule II controlled substance as designated by Health and
26 Safety Code Section 11055, subdivision (b)(1)(K) and is a dangerous drug pursuant to Business
27 and Professions Code section 4022.

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1 9. Acetaminophen/hydrocodone bitartrate, sold under the brand names Vicodin and
2 Norco, is a Schedule III controlled substance as designated by Health and Safety Code section
3 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 **COST RECOVERY**

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

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct -- Driving Under the Influence of Alcohol on July 2, 2008)**

12 11. Respondent subjected his license to discipline under section 4301, subdivision (h)
13 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
14 circumstances are as follows:

15 a. On or about the evening of July 2, 2008, a California Highway Patrol
16 (CHP) Officer was patrolling the area of Cabazon when he observed a Mazda Miata, driven by
17 Respondent, traveling southbound in the northbound lane approaching the CHP Officer head-on.
18 The officer had to move his vehicle to the right in order to avoid colliding with Respondent. The
19 CHP Officer executed a U-turn and conducted a traffic stop. Upon contacting Respondent, the
20 officer noticed an odor of an alcoholic beverage emanating from Respondent. Respondent told
21 the officer he had consumed one beer earlier in the afternoon. Respondent was asked to exit his
22 vehicle; he swayed from side to side, his speech was slow and slurred, and his eyes were red and
23 watery. Respondent agreed to submit to a series of field sobriety tests which he failed to perform
24 as explained and demonstrated. Respondent was arrested for driving under the influence of
25 alcohol. Respondent provided a blood sample which tested at .21 % blood alcohol concentration
26 (BAC).

27 b. On or about September 2, 2008, a complaint was filed in a criminal
28 proceeding entitled *People of the State of California v. John Edward Stocker*, in Riverside County

1 Superior Court, case number BAM036039, charging Respondent with violating Vehicle Code
2 section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section
3 23152, subdivision (b), driving with a BAC of .08 percent or higher, misdemeanors. On
4 September 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty.
5 Respondent was released on his own recognizance and signed an agreement promising to appear
6 at all times as ordered by the Court or magistrate, and that failure to appear would be charged as
7 a separate and distinct offense.

8 c. Following multiple motions to continue the trial date, Respondent failed to
9 appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
10 remains active.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct -- Driving Under the Influence of**
13 **Alcohol/Drugs on December 28, 2008)**

14 12. Respondent subjected his license to discipline under section 4301, subdivision (h)
15 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
16 circumstances are as follows:

17 a. On or about the evening of December 28, 2008, a California Highway
18 Patrol (CHP) Officer responded to assist a Riverside County Sheriff's Deputy with a DUI
19 investigation. The Deputy related that he had observed Respondent standing next to his Mazda,
20 which was parked on the side of a busy thoroughfare. Respondent's trousers were down around
21 his ankles, he had numerous fresh and bleeding abrasions to his head, he was staggering about
22 dramatically, and he was covered in his own feces. The CHP Officer conducted a records check
23 and discovered Respondent's driver's license had been suspended as a result of the DUI arrest
24 detailed in paragraph, 12, above. The officer noticed the distinct odor of an alcoholic beverage
25 emanating from Respondent's breath and person. Respondent was stuporous, he had red, watery
26 eyes, slack facial features, and was very disheveled in appearance. Respondent told the officer he
27 had consumed one beer and one glass of wine earlier, and that he had consumed one-half of a
28 tablet of Norco for pain. Respondent stated that he was on his way home but needed to stop to

1 defecate on the side of the road. Respondent agreed to submit to a series of field sobriety tests
2 which he failed to perform as explained and demonstrated. Respondent was arrested for driving
3 under the influence. At the Riverside County Sheriff's Department facility, a blood sample was
4 drawn from Respondent which tested at .21 percent BAC, and tested positive for the opiates
5 hydrocodone (Vicodin), and hydromorphone.

6 b. On or about March 4, 2009, a complaint was filed in a criminal proceeding
7 entitled *People of the State of California v. John Edward Stocker*, in Riverside County Superior
8 Court, case number BAM037741, charging Respondent with violating Vehicle Code section
9 23152, subdivision (a), driving under the combined influence of alcohol and drugs, with an
10 additional allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or
11 more; Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or higher;
12 and Vehicle Code section 14601.5, subdivision (a), driving on a suspended driver's license,
13 misdemeanors. On March 11, 2009, Respondent was arraigned on the charges and entered a plea
14 of not guilty. Respondent was released on his own recognizance and signed an agreement
15 promising to appear at all times as ordered by the Court or magistrate, and that failure to appear
16 would be charged as a separate and distinct offense.

17 c. Following multiple motions to continue the trial date, Respondent failed to
18 appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
19 remains active.

20 THIRD CAUSE FOR DISCIPLINE

21 **(Unprofessional Conduct -- Driving Under the Influence of Alcohol on March 11, 2009)**

22 13. Respondent subjected his license to discipline under section 4301, subdivision (h)
23 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
24 circumstances are as follows:

25 a. On or about the evening of March 11, 2009, a CHP Officer was patrolling
26 the area of Cabazon when he observed a Ford Crown Victoria, driven by Respondent, traveling at
27 approximately 5 mph and coming to a stop on the side of the road. The right, rear wheel area was
28 smoking. As the officer pulled onto the shoulder behind Respondent, he observed Respondent

1 exit his vehicle and walk around it in a confused manner. The vehicle quickly became engulfed
2 in fire. The CHP Officer called the fire department, and then yelled at Respondent to get away
3 from the vehicle. After several verbal commands, Respondent slowly stumbled his way to the
4 officer. Respondent told the CHP Officer that he had a flat tire and had been looking for a place
5 to pull over. The officer checked Respondent's name and birth date and discovered his driving
6 privileges had been suspended. When speaking to Respondent, the officer noted a strong odor of
7 an alcoholic beverage emanating from Respondent. His speech was very slurred, and his eyes
8 were red and watery. Respondent told the officer he had consumed one beer earlier in the
9 evening. The CHP Officer had to hold Respondent's upper arm to assist him with his balance.
10 Based on Respondent's condition, he was asked to perform only two field sobriety tests.
11 Respondent was unable to perform the tests as explained and demonstrated. Respondent was
12 arrested for driving under the influence of alcohol. Respondent provided a blood sample, which
13 tested at .15 % blood alcohol concentration (BAC).

14 b. On or about May 21, 2009, a complaint was filed in a criminal proceeding
15 entitled *People of the State of California v. John Edward Stocker*, in Riverside County Superior
16 Court, case number BAM038434, charging Respondent with violating Vehicle Code section
17 23152, subdivision (a), driving under the influence of alcohol, with an additional allegation that
18 Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle Code section
19 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle Code section
20 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors. On September
21 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty. Respondent
22 was released on his own recognizance signing an agreement promising to appear at all times as
23 ordered by the Court or magistrate, and that failure to appear would be charged as a separate and
24 distinct offense.

25 c. Following multiple motions to continue the trial date, Respondent failed to
26 appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
27 remains active.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct -- Driving Under the Influence of Alcohol on July 28, 2009)**

3 14. Respondent subjected his license to discipline under section 4301, subdivision (h)
4 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
5 circumstances are as follows:

6 a. On or about the evening of July 28, 2009, a CHP Officer was patrolling the
7 area of Cabazon when he observed a Mazda Miata, driven by Respondent, driving in an erratic
8 manner. The officer conducted a traffic stop. When speaking to Respondent, the officer smelled
9 the odor of an alcoholic beverage emanating from Respondent; his speech was slow and slurred,
10 and his eyes were red and watery. The officer checked Respondent's name and birth date and
11 determined that his driving privileges had been suspended. Respondent told the officer he had
12 consumed one glass of wine at the casino earlier in the evening. Respondent stumbled as he
13 exited his vehicle. The CHP officer noted that Respondent had obvious back problems and some
14 bandaged injuries. Based on Respondent's condition, he was asked to perform only two field
15 sobriety tests. Respondent was unable to perform the tests as explained and demonstrated.
16 Respondent was arrested for driving under the influence of alcohol. Respondent's vehicle was
17 searched and the officer located an opened can of Bud Light beer under the driver's seat. The can
18 was cool and half full. Respondent provided a blood sample which tested at .27 % BAC.

19 b. On or about September 25, 2009, a complaint was filed in a criminal
20 proceeding entitled *People of the State of California v. John Edward Stocker*, in Riverside County
21 Superior Court, case number BAM039567, charging Respondent with violating Vehicle Code
22 section 23152, subdivision (a), driving under the influence of alcohol, with an additional
23 allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle
24 Code section 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle
25 Code section 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors.
26 Respondent failed to appear at his October 15, 2009 arraignment. A warrant was issued for his
27 arrest and remains active.

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DISCIPLINARY CONSIDERATIONS

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

a. On or about May 4, 2010, the Board issued Citation Number CI 2009 43004 to Respondent. The Board's investigation established that Respondent committed the following violations while employed as a pharmacist-in-charge of a Kmart Pharmacy:

(1) Respondent violated California Code of Regulations, section 1714, subdivision (d), in that from April 30, 2007 to January 31, 2009, at least 17,792 tablets of controlled substances and 1630 ml of controlled substances were lost from his pharmacy due to poor recordkeeping.

(2) Respondent violated California Code of Regulations, section 1707.2, subdivision (f) in that at a Board inspection on November 18, 2009, there was no Notice to Consumers posted in a place conspicuous to and readable by pharmacy consumers.

(3) Respondent violated Business and Professions Code section 4342, subdivision (b) in that on November 18, 2009, a Board inspector found expired Lipram-PN, Norco, Trileptal, Zebutal, Lescol XL, Clorazepate, Imipramine, and Prednisone on the pharmacy shelves, ready to be dispensed.

(4) Respondent violated Business and Professions Code section 4076, subdivision (a)(11)(A) in that on November 18, 2009, the Board inspector found three prescription bottles that did not state the physical description of the dispensed medication on the prescription label.

(5) Respondent violated 21 C.F.R. section 1305.05 in that on November 18, 2009, the Board inspector located DEA-222 medication order forms signed by a person who did not have a power of attorney allowing him to sign and order Schedule II controlled substances.

(6) Respondent violated Business and Professions Code section 4305, subdivision (c) in that Respondent was terminated from his employment as pharmacist-in-charge in September 2009 and he did not report this fact to the Board within 30 days.

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