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

In the Matter of the Accusation Against:

Case No. 3885

**RICHARD ALLYN REEL
1308 William Avenue
Chula Vista, CA 91911**

DEFAULT DECISION AND ORDER

Pharmacist License No. RPH 37626

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about February 23, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3885 against Richard Allyn Reel (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 1, 1983, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 37626 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless renewed.

3. On or about March 1, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3885, Statement to Respondent, 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 section 4100, and California Code of Regulations, title 16, section 1704, is required to be reported and maintained with the Board, which was and is:

1 1308 William Avenue
2 Chula Vista, CA 91911

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. Government Code section 11506 states, in pertinent part:

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

12 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
14 3885.

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

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

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 3885, finds that
25 the charges and allegations in Accusation No. 3885, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

27 9. Taking official notice of its own internal records, pursuant to Business and
28 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$1,165.00 as of April 4, 2011.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Richard Allyn Reel has
3 subjected his Pharmacist License No. RPH 37626 to discipline.

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

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
6 based upon the following violations alleged in the Accusation which are supported by the Default
7 Decision Investigatory Evidence Packet in this case:

8 a. Respondent subjected his license to discipline under sections 490 and 4301,
9 subdivision (l) of the Code in that on or about April 30, 2010, in a criminal proceeding entitled
10 *People of the State of California v. Richard A. Reel*, in San Diego County Superior Court, case
11 number S235101, Respondent was convicted on his plea of guilty for violating Penal Code
12 section 368, subdivision (b)(1), willful cruelty to elder/dependent adult – great bodily injury or
13 death; and Penal Code section 422, making criminal threats, misdemeanors pursuant to Penal
14 Code section 17, subdivision (b)(4), crimes that are substantially related to the qualifications,
15 duties, and functions of a pharmacist.

16 b. Respondent is subject to disciplinary action under section 4301,
17 subdivision (h) of the Code for unprofessional conduct in that on or about November 19, 2009,
18 Respondent used alcohol in a manner that was dangerous and injurious to himself and others, and
19 contributed to the conviction described above.

20 c. Respondent is subject to disciplinary action under section 4301,
21 subdivision (h) of the Code in that Respondent self-administered cocaine on May 7, 2006.

22 d. Respondent is subject to disciplinary action under section 4301,
23 subdivision (j) of the Code for unprofessional conduct in that on or about on or about May 7,
24 2006, Respondent violated statutes regulating controlled substances when he possessed cocaine
25 and was under the influence of cocaine in violation of Business and Professions Code sections
26 4059 and 4060.

27 ///

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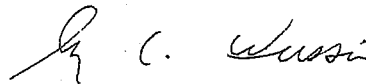
1 ORDER

2 IT IS SO ORDERED that Pharmacist License No. RPH 37626, heretofore issued to
3 Respondent Richard Allyn Reel, is revoked.

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

8 This Decision shall become effective on June 22, 2011.

9 It is so ORDERED May 23, 2011.

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

15
16 DOJ Matter ID: SD2010703111

17 Attachment:
18 Exhibit A: Accusation

Exhibit A

Accusation

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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. 3885

12 **RICHARD ALLYN REEL**
13 **1308 William Avenue**
14 **Chula Vista, CA 91911**

A C C U S A T I O N

15 **Pharmacist License No. RPH 37626**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 1, 1983, the Board of Pharmacy issued Pharmacist License Number
22 RPH 37626 to Richard Allyn Reel (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless
24 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 9. Section 4301 of the Code states:

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

6

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

12

13 (j) The violation of any of the statutes of this state, or any other state, or of the
14 United States regulating controlled substances and dangerous drugs.

15

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

 10. Section 4022 of the Code states

 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
 self-use in humans or animals, 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.

 (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

1 import, the blank to be filled in with the designation of the practitioner licensed to use
2 or order use of the device.

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

5 11. Section 4059 of the Code states, in pertinent 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 12. Section 4060 of the Code states, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished to a person upon the prescription of a physician,
12 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

12 REGULATORY PROVISIONS

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

14

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

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

20 (2) Total criminal record.

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

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

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

25 14. California Code of Regulations, title 16, section 1770, states:

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

1 **COSTS**

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

6 **DRUG**

7 16. Cocaine is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &
9 Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(April 30, 2010 Criminal Conviction for Elder Abuse
12 & Making Criminal Threats on November 19, 2009)**

13 17. Respondent subjected his license to discipline under sections 490 and 4301,
14 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
15 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

16 a. On or about April 30, 2010, in a criminal proceeding entitled *People of the*
17 *State of California v. Richard A. Reel*, in San Diego County Superior Court, case number
18 S235101, Respondent was convicted on his plea of guilty for violating Penal Code section 368,
19 subdivision (b)(1), willful cruelty to elder/dependent adult – great bodily injury or death; and
20 Penal Code section 422, making criminal threats, misdemeanors pursuant to Penal Code section
21 17, subdivision (b)(4).

22 b. As a result of the conviction, on or about April 30, 2010, Respondent was
23 sentenced to three years summary probation, and 120 days in the county jail, the execution of
24 which was stayed pending successful completion of probation. Respondent was further ordered
25 to complete a six-month residential rehabilitation program, and pay \$674 in fees and fines. A
26 protective order was issued for the victim.

27 c. The circumstances that led to the conviction were that on or about the morning
28 of November 19, 2009, officers from the Chula Vista Police Department responded to a call of a

1 domestic disturbance. The officers met an elderly woman (Respondent's mother) at the door of
2 the residence. She told the officers that her son was intoxicated, acting irrationally, and was
3 being destructive. The officers encountered Respondent who had a strong odor of alcohol and
4 urine emanating from his person. He was unsteady on his feet and became belligerent with the
5 officers, ordering them out of the house. Respondent walked out of the house towards the
6 exterior garage, turned towards the officers, and took a fighting stance. Respondent advanced
7 towards an officer, however, because he was highly intoxicated, they were able to take him into
8 custody. Respondent threatened to kill the officers, sue the officers, and sue the city. Respondent
9 was handcuffed behind his back but continued to struggle and flail his legs. Respondent
10 attempted to bite one of the officer's hands. The officers assisted Respondent into a patrol
11 vehicle where he continued to threaten the officers. Respondent's mother told the officers that
12 Respondent had lived with her for 16 years. She was deeply in fear of him; he had been
13 extremely verbally abusive and would poke her in the chest with his index finger while yelling at
14 her. She stated that Respondent's drinking and abusive conduct had been escalating. He had
15 threatened to kill her numerous times in the previous months and had threatened to burn down her
16 house. She was afraid to sleep for fear of being assaulted.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

18 18. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
19 Code for unprofessional conduct in that on or about November 19, 2009, as described in
20 paragraph 17, above, Respondent used alcohol in a manner that was dangerous and injurious to
21 himself and others.
22

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Self-Administration of a Controlled Substance)

24 19. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
25 the Code in that he self-administered cocaine, a controlled substance, on May 7, 2006. The
26 circumstances are as follows:
27

28 ///

1 a. On or about June 30, 2006, in a criminal proceeding entitled *People of the*
2 *State of California v. Richard Allyn Reel*, in San Diego County Superior Court, case number
3 CS202260, Respondent pled guilty to violating Health and Safety Code section 11350,
4 subdivision (a), felony possession of a controlled substance, to wit, cocaine.

5 b. As a result of the plea, on or about June 30, 2006, formal probation was
6 granted for a period of three years, pursuant to Penal Code section 1210. Respondent was given
7 credit for two days served in custody and he was ordered to pay fines and fees in the amount of
8 \$570.00. Respondent was required to successfully complete a drug rehabilitation program, totally
9 abstain from drinking alcohol, not use or possess controlled substances, and to comply with
10 additional terms of probation.

11 c. On or about January 5, 2007, Respondent's sentence was modified by
12 signing a Drug Court contract. At a hearing on March 28, 2008, the court found that Respondent
13 successfully completed Drug Court and the case against him was dismissed.

14 d. The circumstances that led to the criminal proceeding are that on or about
15 the evening of May 7, 2006, an officer from the Chula Vista Police Department was on foot patrol
16 at a local park. The officer observed a Chevrolet SUV with illegally tinted windows. As the
17 officer approached the SUV, the driver (Respondent) started the car and started to back-up. The
18 officer motioned for him to stop. The officer approached Respondent, who rolled down his
19 driver's side window, and obtained Respondent's driver's license. As the officer was speaking to
20 Respondent about his tinted windows, he noticed that Respondent appeared very jumpy. Inside
21 the passenger compartment he noticed a matchbook and inside the center console were
22 approximately 20-30 burnt matches in the cup holder. There was a lighter on the passenger's seat
23 and another lighter under Respondent's left thigh. Respondent's license was reported as
24 suspended by the department's dispatcher. The officer obtained Respondent's permission to
25 search the vehicle. As Respondent exited his vehicle, he turned away from the officer and made a
26 furtive move indicating he had hidden something in his pants or underwear. Respondent was
27 immediately handcuffed. Respondent admitted to the officer that he was trying to hide a glass
28

1 pipe inside his underwear that he used to smoke "crack".¹ The pipe was retrieved and taken into
2 evidence. Respondent denied there was crack cocaine in his vehicle, however, officers found a
3 crack rock on the driver's seat, and another rock on the passenger seat which subsequently tested
4 positive for cocaine. Respondent told the officer he obtained the crack from a friend and that he
5 had smoked crack earlier in the day. Respondent was arrested for possession of a controlled
6 substance and controlled substance paraphernalia.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Violation of California Statutes Regulating**
9 **Controlled Substances & Dangerous Drugs)**

10 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
11 Code for unprofessional conduct in that on or about on or about April 6, 2008, Respondent
12 possessed cocaine and controlled substance paraphernalia, and self-prescribed cocaine as
13 described in paragraph 19, above, in violation of Business and Professions Code sections 4059
14 and 4060 regulating controlled substances and dangerous drugs.

15 **DISCIPLINARY CONSIDERATIONS**

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

18 a. On or about November 21, 1997, in a prior disciplinary proceeding entitled *In*
19 *the Matter of the Accusation Against Richard Allyn Reel*, before the Board of Pharmacy, case
20 number 1913, the Board adopted a stipulation and settlement. It was ordered that Respondent's
21 pharmacist license be revoked. The revocation was stayed and Respondent was placed on
22 probation for five (5) years on various terms and conditions.

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24 ///

25 ¹ "Crack," the illegal street version of pharmaceutical cocaine, has a rock-like, chunky
26 consistency and ranges in color from off white to beige, yellowish or brownish. Crack cocaine
27 must be smoked, it is not water soluble. Crack cocaine use provides a high that is incredibly
28 potent, due to the way it is ingested. The effects of crack cocaine are felt almost instantly,
quicker than any other drug. The "low" that follows this incredible "high" is what drives the user
to seek another dose, or "hit" of crack cocaine.

1 b. As a condition of the stipulation, Respondent admitted to the facts and
2 circumstances of the underlying Accusation in that on November 4, 1994, Respondent unlawfully
3 possessed cocaine, he was under the influence of cocaine, and he illegally possessed a
4 hypodermic syringe.

5 **PRAYER**

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

8 1. Revoking or suspending Pharmacist License Number RPH 37626, issued to Richard
9 Allyn Reel;

10 2. Ordering Richard Allyn Reel to pay the Board of Pharmacy the reasonable costs of
11 the investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;

13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 2/23/11

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

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