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** **Pharmacist License No. RPH 37626** Respondent.	**DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

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:

1308 William Avenue
Chula Vista, CA 91911

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

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

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

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

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

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

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

9. Taking official notice of its own internal records, pursuant to Business and 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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DETERMINATION OF ISSUES

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

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

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

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

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

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

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

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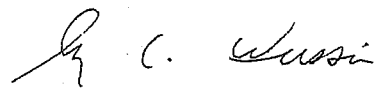
ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 37626, heretofore issued to Respondent Richard Allyn Reel, 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 June 22, 2011.

It is so ORDERED May 23, 2011.



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

DOJ Matter ID: SD2010703111

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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** **Pharmacist License No. RPH 37626** Respondent.	**A C C U S A T I O N**

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 April 1, 1983, the Board of Pharmacy issued Pharmacist License Number RPH 37626 to Richard Allyn Reel (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.

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

5. Section 118, subdivision (b), of the Code provides 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.

STATUTORY PROVISIONS

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

7. Section 492 of the Code states:

> Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.
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> This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

8. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a 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, and the board may inquire into the circumstances surrounding the commission of 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.
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> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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

. . . .

(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 any other state, or of the United States regulating controlled substances and dangerous drugs.

. . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo 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

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

(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.

11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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

REGULATORY PROVISIONS

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

. . . .

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

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

(2) Total criminal record.

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

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

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

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

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

COSTS

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

DRUG

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

FIRST CAUSE FOR DISCIPLINE

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

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

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

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

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

domestic disturbance. The officers met an elderly woman (Respondent's mother) at the door of the residence. She told the officers that her son was intoxicated, acting irrationally, and was being destructive. The officers encountered Respondent who had a strong odor of alcohol and urine emanating from his person. He was unsteady on his feet and became belligerent with the officers, ordering them out of the house. Respondent walked out of the house towards the exterior garage, turned towards the officers, and took a fighting stance. Respondent advanced towards an officer, however, because he was highly intoxicated, they were able to take him into custody. Respondent threatened to kill the officers, sue the officers, and sue the city. Respondent was handcuffed behind his back but continued to struggle and flail his legs. Respondent attempted to bite one of the officer's hands. The officers assisted Respondent into a patrol vehicle where he continued to threaten the officers. Respondent's mother told the officers that Respondent had lived with her for 16 years. She was deeply in fear of him; he had been extremely verbally abusive and would poke her in the chest with his index finger while yelling at her. She stated that Respondent's drinking and abusive conduct had been escalating. He had threatened to kill her numerous times in the previous months and had threatened to burn down her 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. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that on or about November 19, 2009, as described in paragraph 17, above, Respondent used alcohol in a manner that was dangerous and injurious to himself and others.

THIRD CAUSE FOR DISCIPLINE

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

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

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

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

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

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

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

FOURTH CAUSE FOR DISCIPLINE

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

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

DISCIPLINARY CONSIDERATIONS

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

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

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[1] "Crack," the illegal street version of pharmaceutical cocaine, has a rock-like, chunky consistency and ranges in color from off white to beige, yellowish or brownish. Crack cocaine must be smoked, it is not water soluble. Crack cocaine use provides a high that is incredibly 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.

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

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 37626, issued to Richard Allyn Reel;

2. Ordering Richard Allyn Reel 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: 2/23/11

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

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