

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

In the Matter of the Accusation Against:

Case No. 4256

ASHLEY HUYEN DEVINE

6 Delphinium Street
Ladera Ranch, CA 92694

Pharmacist License No. RPH 53072

Respondent.

DECISION AND ORDER

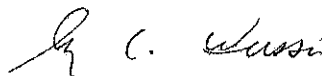
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 25, 2013.

It is so ORDERED on September 25, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **ASHLEY HUYEN DEVINE**
13 **6 Delphinium Street**
14 **Ladera Ranch, CA 92694**

15 **Pharmacist License No. RPH 53072**

16 Respondent.

Case No. 4256

OAH No. 2012110874

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy Attorney
24 General.

25 2. Ashley Huyen Devine (Respondent) is represented in this proceeding by attorney
26 Herbert L. Weinberg, Esq., whose address is 1800 Century Park East, 8th Fl., Los Angeles, CA
27 90067.
28

3. On or about September 25, 2001, the Board of Pharmacy issued Pharmacist License No. RPH 53072 to Ashley Huyen Devine (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4256 and will expire on May 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 4256 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 1, 2012. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 4256 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4256. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4256, agrees that cause exists for discipline and hereby surrenders her Pharmacist License No. RPH 53072 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacist License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 53072, issued to Respondent Ashley Huyen Devine, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as a pharmacist in California as of the
4 effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
6 issued, her wall certificate on or before the effective date of the Decision and Order.

7 4. If she ever applies for licensure or petitions for reinstatement in the State of
8 California, the Board shall treat it as a new application for licensure. Respondent shall satisfy all
9 requirements applicable to that license as of the date the application is submitted to the Board,
10 including, but not limited to certification by a nationally recognized body prior to the issuance of
11 a new license. Respondent is required to report this surrender as disciplinary action. Respondent
12 stipulates that should she apply for any license from the Board on or after the effective date of
13 this decision, all of the charges and allegations contained in Accusation No. 4256 shall be deemed
14 to be true, correct and admitted by Respondent when the Board determines whether to grant or
15 deny the application or petition.

16 5. Respondent shall pay the agency its costs of investigation and enforcement in the
17 amount of \$4,380.50 prior to issuance of a new or reinstated license.

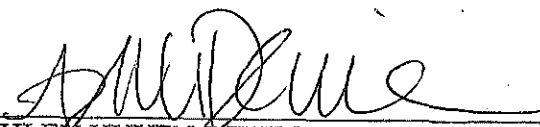
18 6. If Respondent should ever apply or reapply for a new license or certification, or
19 petition for reinstatement of a license, by any other health care licensing agency in the State of
20 California, all of the charges and allegations contained in Accusation No. 4256 shall be deemed to
21 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
22 other proceeding seeking to deny or restrict licensure.

23 7. Respondent shall not apply for licensure or petition for reinstatement for three (3)
24 years from the effective date of the Board of Pharmacy's Decision and Order.

1 ACCEPTANCE

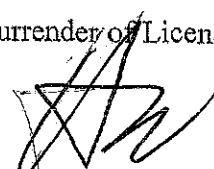
2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, Herbert L. Weinberg, Esq. I understand the stipulation and the
4 effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License
5 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
6 Order of the Board of Pharmacy.

7
8 DATED: 7-15-13


9 ASHLEY HUYEN DEVINE
Respondent

10
11 I have read and fully discussed with Respondent Ashley Huyen Devine the terms and
12 conditions and other matters contained in this Stipulated Surrender of License and Order. I
13 approve its form and content.

14 DATED: 7-15-2013


15 HERBERT L. WEINBERG
Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

19
20
21 DATED: _____

Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 LINDA K. SCHNEIDER
Supervising Deputy Attorney

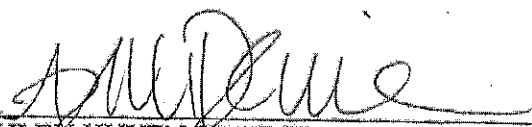
24
25
26 DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant
27
28

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, Herbert L. Weinberg, Esq. I understand the stipulation and the
4 effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License
5 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
6 Order of the Board of Pharmacy.

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8 DATED: 7-15-13


9 ASHLEY HUYEN DEVINE
Respondent

10
11 I have read and fully discussed with Respondent Ashley Huyen Devine the terms and
12 conditions and other matters contained in this Stipulated Surrender of License and Order. I
13 approve its form and content.

14 DATED: 7-17-13


15 HERBERT L. WEINBERG
Attorney for Respondent

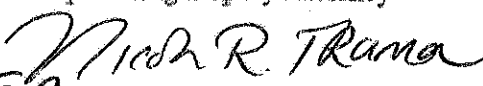
16 ENDORSEMENT

17 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

19
20 DATED: 7/22/2013

21 Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 LINDA K. SCHNEIDER
Supervising Deputy Attorney

24 
25 FOR
26 DESIREE I. KELLOGG
Deputy Attorney General
27 Attorneys for Complainant

28 SD2012703551/70728743.doc

Exhibit A

Accusation No. 4256

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
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P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

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13 **ASHLEY HUYEN DEVINE**
14 **6 Delphinium Street**
Ladera Ranch, CA 92694

A C C U S A T I O N

15 **Pharmacist License No. RPH 53072**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 25, 2001, the Board of Pharmacy issued Pharmacist
24 License Number RPH 53072 to Ashley Huyen Devine (Respondent). The Pharmacist License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 May 31, 2013, unless renewed.

27 ///

28 ///

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 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.

5. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

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 (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. 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.

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1 8. Section 4060 of the Code states:

2 No person shall possess any controlled substance, except that furnished to
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
7 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
8 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
9 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
10 This section shall not apply to the possession of any controlled substance by a
11 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
12 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
13 practitioner, or physician assistant, when in stock in containers correctly labeled
14 with the name and address of the supplier or producer.

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

18 9. Section 4301 of the Code states:

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

23

24 (f) The commission of any act involving moral turpitude, dishonesty,
25 fraud, deceit, or corruption, whether the act is committed in the course of relations
26 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

27

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

30

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

36

37 10. Health & Safety Code (HSC) section 11350 states:

38 a) Except as otherwise provided in this division, every person who
39 possesses (1) any controlled substance specified in subdivision (b) or (c), or
40 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),

1 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
2 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
3 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
4 unless upon the written prescription of a physician, dentist, podiatrist, or
5 veterinarian licensed to practice in this state, shall be punished by imprisonment
6 pursuant to subdivision (h) of Section 1170 of the Penal Code.

7

8 **REGULATORY PROVISIONS**

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

10

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

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

16 (2) Total criminal record.

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

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

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

22 **COST RECOVERY**

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

27 **DRUG**

28 13. Hydrocodone/Ibuprofen; commonly known as Vicoprofen 7.5/200 mg, contains a
Schedule III controlled substance as designated by Health and Safety Code section 11056,
subdivision (e)(4).

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FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,
Fraud, Deceit, and Corruption)**

14. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that during the period of January 16 to March, 13, 2011, Respondent knowingly, voluntarily, and repeatedly obtained hundreds of tablets of hydrocodone/ibuprofen 7.5/200 mg, a controlled substance, by fraud, deceit, or misrepresentation. The circumstances are as follows:

a. At a Kaiser Permanente pharmacy in Santa Ana, California where Respondent was employed as a pharmacist, on or about November 18, 2010, the Audit and Compliance Department required the pharmacist-in-charge to perform daily counts on hydrocodone/ibuprofen 7.5/200 mg tablets. On January 13, 2011, the pharmacist-in-charge noted a loss of 122 tablets without being able to identify the person responsible for the loss. Covert cameras were installed that evening. On January 21, 2011, another 56 tablets were missing. Upon review of the surveillance tapes, Respondent was identified as the suspect responsible for the loss. On February 3, 2011, six tablets were lost. On February 18, 2011, the pharmacist-in-charge sent a notification to the Board reporting the losses. On February 28, 2011, 91 tablets and on March 14, 2011, 17 tablets were missing. At that point, the pharmacy's investigative unit was certain that Respondent was the one responsible for the losses. On March 16, 2011, the pharmacist-in-charge, sent to the Board an investigation report detailing an audit from November 18, 2010 to March 14, 2011 showing a variance of 292 tablets of hydrocodone/ibuprofen 7.5/200 mg.

b. On March 21, 2011, Respondent admitted to the pharmacy's investigator and to a union representative that she was the person in the video. Respondent resigned as pharmacist-per-diem during the interview that day. On March 24 and March 28, 2011, the Board received copies of surveillance tapes, which showed Respondent's activities around the shelf areas where the hydrocodone/ibuprofen tablets were stored. In all instances, Respondent removed one or two medication containers and later returned them to the shelf. On one occasion,

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Respondent hid a container underneath a prescription label. On July 21, 2011, the investigator referred the matter to the Santa Ana Police Department.

c. As a result of the theft of drugs from the pharmacy, a criminal action was filed against Respondent. On or about January 25, 2012, in a criminal proceeding entitled *The People of the State of California vs. Ashley Devine, aka Ashley Huyen Devine, aka, Ashley H. Devine, aka Ashley Dang*, in Orange County Superior Court, Central Justice Center, Case Number 11CF2223, Respondent pled guilty to violating HSC section 11350, subdivision (a), possession of a controlled substance, a felony, and deferred entry of judgment was granted under PC 1000. Charges for violation of Penal Code (PC) section 484, subdivision (a) - 488 - 508, embezzlement by clerk, agent, or servant, and Code section 4060, possession of a controlled substance without a prescription, felonies, were dismissed pursuant to a plea bargain.

d. As a result of her guilty plea, on or about January 25, 2012, Respondent was required to enroll in and complete an 18-month diversion program, perform 30 hours of community service with the OneOC Court Referral Program, and pay fines, fees, and restitution. Respondent was also required to return to court on July 24, 2013 pursuant to PC 1000.

SECOND CAUSE FOR DISCIPLINE

(Violation of Drug Laws)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), in that Respondent violated Health & Safety Code section 11350 subdivision (a), regulating controlled substances, as detailed in paragraph 14, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Pharmacy Laws)

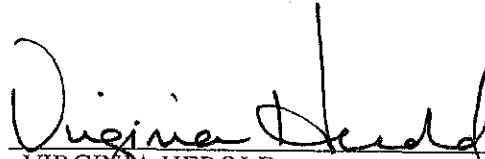
16. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), in that Respondent possessed hydrocodone/ibuprofen without a prescription in violation of Code section 4060, as detailed in paragraph 14, above, in violation of pharmacy law.

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 53072, issued to Ashley Huyen Devine;
2. Ordering Ashley Huyen Devine 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: 10/25/12



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

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