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

In the Matter of the Accusation Against:

Case No. 4312

DEAN STANLEY WESTPHALEN

4110 17<sup>TH</sup> Avenue Kearney, NE 68845

Pharmacist License No. RPH 41307

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 November 8, 2013.

It is so ORDERED on November 5, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN C. WEISSER Board President

1	KAMALA D. HARRIS					
2	Attorney General of California DIANN SOKOLOFF					
3	Supervising Deputy Attorney General SHANA A. BAGLEY					
4	Deputy Attorney General State Bar No. 169423					
5	1515 Clay Street, 20th Floor P.O. Box 70550					
6	Oakland, CA 94612-0550 Telephone: (510) 622-2129					
7	Facsimile: (510) 622-2129  Attorneys for Complainant					
8	BEFORE THE					
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS					
10	STATE OF CALIFORNIA					
11	In the Matter of the Accusation Against: Case No. 4312					
12	DEAN STANLEY WESTPHALEN					
13	4110 17th Avenue   Kearney, NE 68845   STIPULATED SURRENDER OF					
14	Pharmacist License No. RPH 41307  LICENSE AND ORDER					
15	Respondent.					
16						
17	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this					
18	proceeding that the following matters are true:					
19	<u>PARTIES</u>					
20	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.					
21	She brought this action solely in her official capacity and is represented in this matter by Kamala					
22	D. Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy Attorney					
23	General.					
24	2. Dean Stanley Westphalen (Respondent) is represented in this proceeding by attorney					
25	Steven L. Simas, Esq., whose address is: 3835 North Freeway Blvd., Ste. 228, Sacramento,					
26	California 95834.					
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3. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License No. RPH 41307 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4312 and expired on July 31, 2013.

#### JURISDICTION

4. Accusation No. 4312 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 January 25, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 4312 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. 4312. 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 his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

### <u>CULPABILITY</u>

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4312, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 41307 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his 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 his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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 Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and 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:

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### **ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 41307, issued to Respondent Dean Stanley Westphalen, 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. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.
- 2. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 4312 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition. Respondent may not reapply for licensure for at least three years from the effective date of this decision.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$5,047.50.00 prior to issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 4312 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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# **ACCEPTANCE**

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

- 1	when the many and agree to be bound by the Decision and Order of the		
6	Board of Pharmacy.		
7			
8	DATED: 8-19-13 Doon Stanlay Westphaler		
9	DEAN STANLEY WESTPHALEN/ Respondent		
-10	·		
11	I have read and fully discussed with Respondent Dean Stanley Westphalen 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: 0/12-/12 - 1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1		

STEVEN L. SIMAS, ESQ. Attorney for Respondent

### **ENDORSEMENT**

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

Dated: 19 AUGUST ZO13

Respectfully submitted,

KAMALA D. HARRIS

Attorney General of California

DIATH SOKOLOFF

Supervising Deputy Attorney General

SHANA A. BAGUEY Deputy Attorney General Attorneys for Complainant

SF2012401919/ Stlpulation.rtf

Exhibit A

Accusation No. 4312

			·		
1	Kamala D. Harris				
2	Attorney General of California DIANN SOKOLOFF				
	Supervising Deputy Attorney General				
3	SHANA A. BAGLEY Deputy Attorney General				
4	State Bar No. 169423				
5	1515 Clay Street, 20th Floor P.O. Box 70550				
6	Oakland, CA 94612-0550 Telephone: (510) 622-2129				
7	Facsimile: (510) 622-2270		•		
	Attorneys for Complainant		•		
8	BEFORE THE BOARD OF PHARMACY				
9.	DEPARTMENT OF CONSUMER AFFAIRS				
10	STATE OF C	CALIFORNIA			
11	In the Matter of the Accusation Against:	Case No. 4312	· · ·		
12	DEAN STANLEY WESTPHALEN				
13	4110 17th Avenue	A C C II C A T I C S I			
	Kearney, NE 68845	ACCUSATION			
14	Pharmacist License No. RPH 41307				
15	Respondent.		·		
16		1	,		
17	Complainant alleges:	•			
18	PARTIES				
19					
20	Samuel Company of the				
]	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.				
21	2. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License				
22	Number RPH 41307 to Dean Stanley Westphalen (Respondent). The Pharmacist License was in				
23	full force and effect at all times relevant to the charges brought in this Accusation and will expir				
24	on July 31, 2013, unless renewed.		• •		
25	<u>JURISDICTION</u>				
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.				
(					

4. Code section 118, subdivision (b), 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

- 5. Code section 490 states, in part:
- (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.
- 6. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.
- 7. Code section 4059 states, in part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

## 8. Code section 4060 states, in part:

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 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

- 9. Code section 4300 states, in part:
  - (a) Every license issued may be suspended or revoked.
- (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
  - (1) Suspending judgment.
  - (2) Placing him or her upon probation.
  - (3) Suspending his or her right to practice for a period not exceeding one year.
  - (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .
- 10. Code section 4301 states, in pertinent part:

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:

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

(j) The violation of any of the statutes of this 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. . . . [T]he 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 . . . 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.
- 11. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by the state Uniform Controlled Substances Act, Health and Safety Code section 11000 et seq.
- 12. Health and Safety Code section 11173, subdivision (a), provides, in part, that no person shall obtain, or attempt to obtain controlled substances by fraud, deceit, misrepresentation, or subterfuge.
- 13. Health and Safety Code section 11350, subdivision (a), provides that no person shall possess a controlled substance without a prescription.

### **REGULATORY PROVISIONS**

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.

#### COST RECOVERY

15. Code section 125.3 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.

## FACTUAL STATEMENT

- 16. For an unknown period, Rite Aid #5999 (Rite Aid) in Angel's Camp, California, employed Respondent as a pharmacist. From on or about September 8, 2010 through April 1, 2011, Respondent was the Pharmacist in Charge at Rite Aid.
- 17. In or about January through March 2011, Rite Aid employees conducted a drug audit and found a loss of approximately 17 types of controlled substances.
- 18. On or about March 31, 2011, based upon the results of the drug audit, above, Rite Aid employees conducted a surveillance operation of Respondent. The employees discovered that 100 tablets of hydrocodone 10/325 mg were missing from the pharmacy after Respondent took a lunch break. One employee observed Respondent place two cardboard boxes in his car. The employees found approximately 423 dangerous drugs and 172 controlled substances in unlabeled prescription bottles in Respondent's car.
- 19. Respondent admitted to stealing furosemide, hydrocodone, loratidine (an over the counter antihistamine), and potassium from the pharmacy.
- 20. On or about March 31, 2011, the Angel's Camp police department arrested Respondent for violating Health and Safety Code section 11350 (possession of controlled substances) and Penal Code section 459 (burglary) and 487 (grand theft). The arresting officer found the following drugs in Respondent's car: 50 tablets of alprazolam .5 mg, 1 tablet Avinza 60 mg, 5 tablets azithromycin 250 mg, 1 tablet Cialis 10 mg, 17 tablets Cialis 20 mg, 9 tablets

Clarinex 5 mg, 5 tablets Clarinex D 12 hour, 55 tablets cyclobenzaprine 10 mg, 9 tablets dicloxacillin 500 mg, 57 tablets, Dilaudid 4 mg, 1 tablet fluconazole 100 mg, 1 tablet fluconazole 200 mg, 19 tablets furosemide 80 mg, 3 tablets furosemide 40 mg, 13 tablets furosemide 20 mg, 8 tablets hydrocodone with acetaminophen 10/325 mg, 45 tablets hydroxyzine 25 mg, 33 tablets Klor-Con 8 mEq, 13 Levaquin 500 mg, 48 tablets Levitra 20 mg, 19 tablets Lipitor 20 mg, 91 tablets Lipitor 10 mg, 2 tablets Meridia 15 mg, 26 tablets Norvasc 5 mg, 4 tablets Oracea 40 mg, 39 tablets phentermine 37.5 mg, 1 tablet penicillin VK 500 mg, 1 tablet Tylenol #3 325/30 mg, 1 tablet Valacyclovir 1 gm, 2 tablets Viagra 50 mg, 1 tablet Viagra 100 mg, 10 tablets Xenical 120 mg.

- 21. On or about February 24, 2012, in a criminal matter entitled *The People of the State of California v. Dean S. Westphalen*, Calaveras County Superior Court Case No. 11F5110, Respondent was convicted by guilty plea for violating Penal Code section 487, subdivision (a), (Grand Theft), a felony, and Health and Safety Code section 11375, subdivision (b)(2), (Possession of a Controlled Substance for Sale), a misdemeanor. The court sentenced Respondent to serve 60 days in jail and three years of formal probation, complete mental health and drug treatment counseling, and ordered him to comply with other terms and conditions.
- 22. The factual circumstances underlying the 2012 convictions are set forth in paragraphs 16 through 20, above.

#### DRUGS

23. Alprazolam is the generic name for Xanax. It is a Schedule IV controlled substance as defined by Health and Safety Code section 11057, subdivision (d), and a dangerous drug within the meaning of Code section 4022. It is used to treat anxiety.

- 24. Avinza is the trade name for morphine sulfate. It is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L), and a dangerous drug within the meaning of Code section 4022. It is an analgesic.
- 25. Azithromycin is the generic name for Zithromax. It is a dangerous drug within the meaning of Code section 4022. It is an antibiotic.
- 26. Cialis is the trade name for tadalafil. It is a dangerous drug within the meaning of Code section 4022. It is an impotence agent.
- 27. Clarinex is the trade name for desloratidine. It is a dangerous drug within the meaning of Code section 4022. It is an antihistamine.
- 28. Cyclobenzaprine is the generic name for Flexeril. It is a dangerous drug within the meaning of Code section 4022. It is a muscle relaxant.
- 29. Dicloxacillin is the generic name for Dynapen. It is a dangerous drug within the meaning of Code section 4022. It is an antibiotic.
- 30. Dilaudid is the trade name for hydromorphone hydrochloride. It is a Schedule II controlled substance as defined by Health and Safety Code section 11055, subdivision (b)(1)(J), and a dangerous drug within the meaning of Code section 4022. It is a narcotic analgesic.
- 31. Fluconazole is the generic name for Diflucan. It is a dangerous drug within the meaning of Code section 4022. It is an antifungal.
- 32. Furosemide is the generic name for Lasix. It is a dangerous drug within the meaning of Code section 4022. It is a diuretic.
- 33. Hydrocodone with acetaminophen is the generic name for Vicodin. It is a Schedule III controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(5), and a dangerous drug within the meaning of Code section 4022. It is an analgesic.

- 34. Hydroxyzine is the generic name for Vistaril. It is a dangerous drug within the meaning of Code section 4022. It is an antihistamine and a sedative.
- 35. Klor-Con is the trade name for potassium chloride. It is a dangerous drug within the meaning of Code section 4022.
- 36. Levaquin is the trade name for levofloxacin. It is a dangerous drug within the meaning of Code section 4022. It is an antibiotic.
- 37. Levitra is the trade name for vardenafil. It is a dangerous drug within the meaning of Code section 4022. It is an impotence agent.
- 38. Lipitor is a brand name for atorvastatin calcium. It is a dangerous drug a within the meaning of Code section 4022. It is a statin.
- 39. Meridia is a brand name for sibutramine. It is a Schedule IV controlled substance as defined by Code of Federal Regulations, title 21, section 1308.14, subdivision (e)(10), and a dangerous drug a within the meaning of Code section 4022. It is an anorexiant.
- 40. Norvasc is the trade name for amlodipine. It is a dangerous drug a within the meaning of Code section 4022. It is a calcium channel blocker.
- 41. Oracea is the trade name for doxyxycline. It is a dangerous drug a within the meaning of Code section 4022. It is an antibiotic.
- 42. Phentermine is the generic name for Adipex. It is a Schedule IV controlled substance as defined by Health and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of Code section 4022. It is an anorexiant.
- 43. Penicillin VK is a dangerous drug within the meaning of Code section 4022. It is an antibiotic.

- 44. Tylenol #3 is the trade name for acetaminophen with codeine. It is a Schedule III controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(2), and a dangerous drug within the meaning of Code section 4022. It is an analgesic.
- 45. Valacyclovir is a dangerous drug within the meaning of Code section 4022. It is an anti-viral.
- 46. Viagra is the trade name for sildenafil. It is a dangerous drug within the meaning of Code section 4022. It is an impotence agent.
- 47. Xenical is the trade name for orlistat. It is a dangerous drug within the meaning of Code section 4022. It is an anorexiant.

#### FIRST CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Commission of Acts of Dishonesty)

48. Respondents' license is subject to discipline for unprofessional conduct under Code section 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption in that he stole and diverted numerous controlled substances and dangerous drugs during his employment with RiteAid, as set forth in paragraphs 16 through 20, above.

#### SECOND CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Violating State Statutes re: Controlled Substances)

49. Respondent's license is subject to discipline for unprofessional conduct under Code section 4301, subdivision (j), for violating state statutes regulating controlled substances and dangerous drugs, including but not limited to Code section 4059 and Health and Safety Code sections 11171 and 11173, subdivision (a), and 11350 in that Respondent unlawfully obtained and possessed controlled substances and dangerous drugs, as set forth in paragraphs 16 through 20, above.

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#### THIRD CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Substantially Related Convictions)

50. Respondent's license is subject to discipline for unprofessional conduct under Code sections 490 and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacist, as set forth in paragraphs 21 and 22, above.

### **DISCIPLINARY CONSIDERATIONS**

- 51. To determine the degree of discipline, if any, to be imposed on Respondent,

  Complainant alleges that on or about July 13, 2011, Respondent entered a Board diversion

  program. On or about May 10, 2012, the program terminated Respondent and determined that he was a public risk.
- 52. To determine the degree of discipline, if any, to be imposed on Respondent,
  Complainant alleges that on or about April 8, 2010, in a prior action, the Board of Pharmacy
  issued Citation Number CI 2008 40250 for violating Code section 4301, subdivision (f), for
  unprofessional conduct based upon the September 10, 2007, filing of a criminal complaint for
  violating Health and Safety Code section 11360, subdivision (a), (Transportation of Marijuana)
  and an October 18, 2007, conviction for violating Health and Safety Code section 11357,
  subdivision (c), (Possession of Marijuana). The Citation assessed a fine of \$3,000.00. The
  Citation is now final and is incorporated by reference as if fully set forth.
- 53. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 5, 2008, the Director of Health of the State of Nebraska in the disciplinary proceeding was entitled *State of Nebraska vs. Dean S. Westphalen*, Department of Health of the State of Nebraska, Case File No. RP 80-1, issued a decision suspending his pharmacy license for five years, placing his license on probation for an additional five years, and

requiring him to comply with other terms and conditions. The State of Nebraska based the license restrictions based upon the following findings: February 18, 1908, felony conviction for possessing a controlled substance; possession of 37 types of controlled substances with intent to deliver; intentional delivery of 10 types of controlled substances beyond the authorized scope of practice as a pharmacist; committing an act of burglary against a pharmacy where he was employed; possession of 20 types of controlled substances in his car with the intent to deliver; possession of controlled substances in his residence with the intent to deliver; delivering 3 types of controlled substances from his car; removing controlled substances from a pharmacy for personal use; general unprofessional conduct; and unlawful invasion of the field of practice of professions licensed in the State of Nebraska.

## PRAYER

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

- Revoking or suspending Pharmacist License Number RPH 41307, issued to Dean Stanley Westphalen;
- Ordering Dean Stanley Westphalen 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; and
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 1/17/13

VIRGINIA HEROLD
Executive Officer

Boàrd of Pharmacy

Department of Consumer Affairs

State of California Complainant

SF2012401919/ accusation.rtf