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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. 4343

**THOMAS JOHN DIRKES**  
254 Pleasant Circle  
Stateline, CA 89449

**DEFAULT DECISION AND ORDER**

Pharmacist License No. RPH 38648

Respondent.

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about October 25, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 4343 against Thomas John Dirkes (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 21, 1984, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 38648 to Respondent. The Pharmacist License expired on May 31, 2012, and has not been renewed.

3. On or about February 22, 2013, Respondent was served by Certified Mail and First Class Mail with copies of the Accusation No. 4343, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
2 Code section 4100, is required to be reported and maintained with the Board. Respondent's  
3 address of record was and is: 254 Pleasant Circle. Stateline, NV 89449.

4 4. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
6 124.

7 5. On or about February 25, 2013, the Certified Mail to Respondent containing the  
8 documents described in Paragraph was returned by the U.S. Postal Service marked "Unclaimed."  
9 The First class Mail to Respondent of said documents has not been returned by the U.S. Postal  
10 Service.

11 6. Government Code section 11506 states, in pertinent part:

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
19 4343.

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

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on the  
27 relevant evidence contained in the Default Decision Investigative Evidence Packet in this matter,  
28 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. 4343,  
finds that the charges and allegations in Accusation No. 4343, are separately and severally, found  
to be true and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and  
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
3 and Enforcement is \$1,912.50 as of March 22, 2013.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Thomas John Dirkes has  
6 subjected his Pharmacist License No. RPH 38648 to discipline.

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

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

11 (a) Violation of Business & Professions Code sections 4301(j) and 4301(o) for  
12 unprofessional conduct for violation of statutes regarding dangerous drugs and  
13 Board regulations;

14 (b) Violation of Business & Professions Code sections 4301(a) and 4301(f) for  
15 unprofessional conduct for fraud, deceit, dishonesty , gross immorality and  
16 moral turpitude

17 (c) Violation of Business & Professions Code section 4301(g) for unprofessional  
18 conduct because he made false representations of fact in pharmacy documents

19 (d) Violation of Business and Professions Code sections 4301(k) and 4301(l) for  
20 unprofessional conduct by being convicted after trial of a felony substantially  
21 related to the qualifications, functions and duties of a licensee.

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**ORDER**

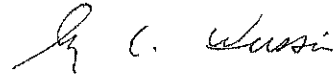
IT IS SO ORDERED that Pharmacist License No. RPH 38648, heretofore issued to Respondent Thomas John Dirkes, is revoked.

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 May 29, 2013.

It is so ORDERED ON April 29, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
STANLEY C. WEISSER  
Board President

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 STERLING A. SMITH  
Deputy Attorney General  
4 State Bar No. 84287  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **THOMAS JOHN DIRKES**  
13 **P. O. Box 7113**  
**Stateline, CA 89446**  
14 **Pharmacist License No. RPH 38648**  
15 Respondent.

Case No. 4343

**ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 21, 1984, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 38648 to Thomas John Dirkes (Respondent). The Pharmacist License expired on  
24 May 31, 2012, and has not been renewed.

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JURISDICTION

1  
2       3.     This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5       4.     Section 4300 of the Code states:

6       "(a) Every license issued may be suspended or revoked.

7       (b) The board shall discipline the holder of any license issued by the board, whose default  
8 has been entered or whose case has been heard by the board and found guilty, by any of the  
9 following methods:

10       (1) Suspending judgment.

11       (2) Placing him or her upon probation.

12       (3) Suspending his or her right to practice for a period not exceeding one year.

13       (4) Revoking his or her license.

14       (5) Taking any other action in relation to disciplining him or her as the board in its  
15 discretion may deem proper.

16       (c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
17 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
18 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
19 may issue the license subject to any terms or conditions not contrary to public policy, including,  
20 but not limited to, the following:

21       (1) Medical or psychiatric evaluation.

22       (2) Continuing medical or psychiatric treatment.

23       (3) Restriction of type or circumstances of practice.

24       (4) Continuing participation in a board-approved rehabilitation program.

25       (5) Abstention from the use of alcohol or drugs.

26       (6) Random fluid testing for alcohol or drugs.

27       (7) Compliance with laws and regulations governing the practice of pharmacy.

28

1 (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
2 certificate of licensure for any violation of the terms and conditions of probation. Upon  
3 satisfactory completion of probation, the board shall convert the probationary certificate to a  
4 regular certificate, free of conditions.

5 (e) The proceedings under this article shall be conducted in accordance with Chapter 5  
6 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
7 shall have all the powers granted therein. The action shall be final; except that the propriety of  
8 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
9 Civil Procedure."

10 5. Section 4301 of the Code states, in pertinent part, that:

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

14 (a) Gross immorality.

15 ...

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

19 (g) Knowingly making or signing any certificate or other document that falsely represents  
20 the existence or nonexistence of a state of facts.

21 ...

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

24 (k) The conviction of more than one misdemeanor or any felony involving the use,  
25 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
26 combination of those substances.

27 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
28 of a licensee under this chapter. The record of conviction of a violation of Chapter 13



1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
2 substances or of a violation of the statutes of this state regulating controlled substances or  
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
5 The board may inquire into the circumstances surrounding the commission of the crime, in order  
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
10 of this provision. The board may take action when the time for appeal has elapsed, or the  
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
15 indictment.

16 ...  
17 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
18 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
19 federal and state laws and regulations governing pharmacy, including regulations established by  
20 the board or by any other state or federal regulatory agency."

21 6. Section 4059 of the Code states, in pertinent part, that:

22 "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
23 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
24 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
25 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
26 3640.7.

27 ..."

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1 (a) Took steps to reverse the fraudulent cash register transactions and return the  
2 dispensed Cialis 5 mg tablets, as alleged in Paragraph 9, from his personal belongings to the  
3 Raley's Pharmacy drug stock.

4 (b) When initially interviewed by Raley's Pharmacy representatives, represented that no  
5 patients whom he knew to be "T.B." or M.B. existed, that each was a fictitious person, and that in  
6 fact, the aforesaid Cialis prescriptions were for Respondent

7 (c) After his initial interview by Raley's Pharmacy representatives, falsely and  
8 fraudulently represented to Raley's Pharmacy representatives that he was authorized by "Jenny",  
9 a nurse employed by Patrick Martin M.D., to fill said Cialis prescriptions for "M.B." and "T.B."

10 (d) After his initial interview by Raley's Pharmacy representatives, falsely and  
11 fraudulently represented to the Board's inspector that persons known as Tom Brown and Mike  
12 Brown actually did exist, and that the aforesaid Cialis prescriptions were for them, and not for  
13 Respondent.

14 (e) After his initial interview by Raley's Pharmacy representatives, falsely and  
15 fraudulently represented to the Board's inspector that Respondent submitted a written statement  
16 to Raley's Pharmacy representatives setting forth false statements of Respondent's culpability  
17 because Raley's Pharmacy representatives wrongfully induced him to do so.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-False Representations of Fact in Documents)**

20 12. Complainant realleges Paragraph 10 above. Respondent is subject to disciplinary  
21 action under Code section 4301, subdivision (g), because on or about June 4, 2011, Respondent  
22 knowingly made documents falsely representing the existence or nonexistence of states of fact, as  
23 set forth below.

24 (a) Completed a "telephone prescription" form falsely stating that on March 3, 2011,  
25 "Jennifer" had phoned in prescriptions for Cialis medication for "M.B. & T.B." to Raley's  
26 Pharmacy. In fact, no such telephone prescriptions were made, "T.B." was not then a patient of  
27 Dr. Martin, "M.B." was not then a patient of Dr. Martin, "Jennifer" was then on leave and not  
28 working for Dr. Martin, and Respondent was not working at Raley's Pharmacy on March 3, 2011.

1 (b) Created and printed prescription labels dated March 4, 2011, for two (2) prescriptions  
2 of 30 tablets of Cialis Tab 5 mg, one purporting to be for "T.B." and the other for "M.B.", and  
3 purportedly prescribed by Dr. Martin. In fact, no physician or other professional had prescribed  
4 Cialis for "T.B." or "M.B.", or caused telephone prescription orders for the medication to be  
5 made to Respondent or Raley's Pharmacy on March 4, 2011.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Criminal Conviction)**

8 13. Respondent is subject to disciplinary action under Code section 4301, subdivisions  
9 (k) and (l) because on or about December 14, 2011, after trial in the case entitled *The State of*  
10 *Nevada, plaintiff v. Thomas John Dirkes, defendant*, Ninth Judicial District Court of the State of  
11 Nevada in and for the County of Douglas, Respondent was convicted of violating Nevada  
12 Revised States section 484C.430, a felony. Respondent's conviction is substantially related to the  
13 qualifications, functions and duties of a licensed pharmacist.

14 13. The circumstances of Respondent's criminal conviction are that on or about June 12,  
15 2010, Respondent operated a motor vehicle in Douglas County, Nevada, while under the  
16 influence of alcoholic beverages. At that time and place, the motor vehicle that Respondent was  
17 operating turned over in a crash, and Respondent's passenger was seriously injured.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacist License Number RPH 38648, issued to Thomas  
22 John Dirkes;

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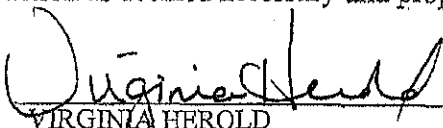
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2. Ordering Thomas John Dirkes to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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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