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

11 In the Matter of the Accusation Against:

Case No. 3175

12 DENNIS HUGHES
606-25 1/2 Road, #24
13 Grand Junction, CO 81505
Pharmacist License No. RPH 26090
14

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about July 15, 1969, the Board of Pharmacy (Board) issued
22 Pharmacist License Number RPH 26090 to Dennis Hughes (Respondent). The Pharmacist
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2008, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

STATUTORY PROVISIONS

4. Code section 480, subdivision (a) states, in pertinent part:

A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. 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 which 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.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

....

5. Section 490 of the Code states:

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. 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 which 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 4059, subdivision (a), states, in pertinent part:

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.

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7. Code section 4300, subdivision (a) states: "Every license issued may be suspended or revoked."

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1 8. Section 4301 of the Code states, in pertinent part:

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

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

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

12

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

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

 (n) The revocation, suspension, or other discipline by another state of a
 license to practice pharmacy, operate a pharmacy, or do any other act for which a
 license is required by this chapter.

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

 (p) Actions or conduct that would have warranted denial of a license.

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1 9. Health and Safety Code section 11171, subdivision (a),
2 states: "No person shall prescribe, administer, or furnish a controlled substance except under the
3 conditions and in the manner provided by [the Uniform Controlled Substances Act]."

4 10. Health and Safety Code section 11173, subdivision (a) states:
5 No person shall obtain or attempt to obtain controlled substances, or
6 procure or attempt to procure the administration of or prescription for controlled
7 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
8 concealment of a material fact.

8 **REGULATORY PROVISIONS**

9 11. California Code of Regulations, title 16, section 1770, states:
10 For the purpose of denial, suspension, or revocation of a personal or
11 facility license pursuant to Division 1.5 (commencing with Section 475) of the
12 Business and Professions Code, a crime or act shall be considered substantially
13 related to the qualifications, functions or duties of a licensee or registrant if to a
14 substantial degree it evidences present or potential unfitness of a licensee or
15 registrant to perform the functions authorized by his license or registration in a
16 manner consistent with the public health, safety, or welfare.

14 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

15 12. Oxycodone is an opiate used to treat severe pain. It is classified as a
16 Schedule II controlled substance in Health and Safety Code section 11055, subdivision (b)(1)(N),
17 and is a dangerous drug, as defined in Code section 4022. The brand name for Oxycodone is
18 Oxycontin. The brand name for Oxycodone with APAP is Percocet.

19 13. Sildenafil is a drug used to treat erectile dysfunction. It is a dangerous
20 drug, as defined in Code section 4022.

21 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially-Related Crimes)**

3 15. Respondent is subject to disciplinary action under Code sections 490, and
4 4301, subdivision (l), as a result of his conviction of crimes that are substantially related to the
5 qualifications, functions, and duties of a pharmacist. On or about November 12, 2002,
6 Respondent pled guilty and was convicted of one misdemeanor count of possession of a
7 controlled substance, and one misdemeanor count of retail theft in the criminal proceeding
8 entitled *State of Utah v. Dennis Hughes* (Third District Court, Salt Lake County,
9 No. 021909882). As part of Respondent's criminal plea bargain, he agreed to surrender his Utah
10 license to practice as a Pharmacist and Dispense Controlled Substances. Respondent was
11 sentenced to 365 days in jail, and placed on probation for three years. The underlying factual
12 circumstances involved Respondent's arrest on or about July 25, 2002, following a period of
13 surveillance by the Loss Prevention Department at K-Mart Store #4273 in Salt Lake City, Utah.
14 At the time of his arrest, Respondent was found with five unaccounted-for Percodan pills and
15 twelve unaccounted-for Viagra pills in his possession.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Furnishing Controlled Substances Without Authorization)**

18 16. Respondent is subject to disciplinary action under Code section 4301,
19 subdivision (j); and section 4301, subdivision (o), in conjunction with section 4059, subdivision
20 (a), for furnishing controlled substances without authorization. On the following six dates, while
21 working as a pharmacist at a Von's Pharmacy in Yucca Valley, California (Von's), Respondent
22 furnished Oxycodone, a controlled substance and a dangerous drug, to patient Beau H., without
23 authorization from a prescriber: (1) July 22, 2006; (2) July 30, 2006; (3) August 3, 2006;
24 (4) August 12, 2006; (5) September 3, 2006; and (6) September 17, 2006. Respondent
25 accomplished the unauthorized furnishing of Oxycodone by adding a fraudulent Oxycodone
26 prescription to a valid, existing prescription for another controlled substance/another patient. He
27 would then leave Von's with the unauthorized Oxycodone, but without paying for it.
28 Investigative evidence substantiated that Respondent furnished a total 460 unauthorized tablets

1 of Oxycodone to patient Beau H., representing a total retail loss to Von's of \$4,446.45.
2 Respondent admitted illegally furnishing Oxycodone to Beau H., and agreed to pay Von's
3 \$4,000.00 in restitution.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Fraudulently Obtaining Controlled Substances)**

6 17. Respondent is subject to disciplinary action under Code section 4301,
7 subdivisions (f) and (g); and subdivisions (j) and (o), in conjunction with Health and Safety Code
8 section 11173, subdivision (a), for fraudulently obtaining controlled substances. Complainant
9 now refers to and incorporates the allegations in paragraph 16, as though set forth fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Discipline by Another State)**

12 18. Respondent is subject to disciplinary action under section 4301,
13 subdivision (n), in that on November 21, 2002, in Case No. DOPL 2002-269, the Division of
14 Occupational and Professional Licensing of the Department of Commerce of the State of Utah
15 (the Utah Division) issued an order adopting a discipline-related stipulation that was entered into
16 between the Utah Division and Respondent. The stipulation resolved pending allegations of
17 unprofessional conduct involving the theft of controlled substances. The terms of the Stipulation
18 included an express admission by Respondent that there was cause to discipline his Utah
19 Pharmacist License, and acknowledgment that adoption of the stipulation by the Utah Division
20 would constitute official disciplinary action. Based on these acknowledgments, Respondent
21 agreed to surrender his license.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Conduct that Would Have Warranted the Denial of a License)**

24 19. Respondent is subject to disciplinary action under Code section 4301,
25 subdivision (p), in conjunction with section 480, in that Respondent's conviction of
26 substantially-related crimes, and the fraudulent underlying behavior, amounted to conduct that
27 would have warranted the denial of a license. Complainant now refers to and incorporates the
28 allegations set forth in paragraphs 15-17, as if set forth fully.

1 DISCIPLINARY CONSIDERATIONS

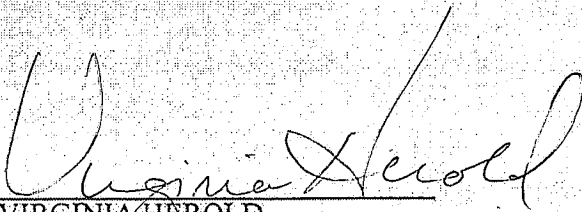
2 20. To determine the degree of discipline, if any, to be imposed on
3 Respondent, Complainant alleges that on or about July 1, 1981, the Board filed an accusation
4 against Respondent in Case No. 1071, alleging numerous violations of the Code and relevant
5 State and Federal law. In Accusation No. 1071, the Board alleged that Respondent had subjected
6 his license to discipline by engaging in many forms of unprofessional conduct, including having
7 unaccounted for shortages of controlled substances, filling prescriptions without the required
8 verification, and being convicted of possession of a controlled substance. On or about May 10,
9 1983, Respondent and the Board entered into a stipulation in which Respondent admitted the
10 underlying allegations, and was placed on probation for a period of three years, with specific
11 terms and conditions. On July 8, 1983, the Board adopted the stipulation as its decision. That
12 decision is now final, and is incorporated as if fully set forth.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board issue a decision:

- 16 1. Revoking or suspending Pharmacist License Number RPH 26090, issued
17 to Respondent;
- 18 2. Ordering Dennis Hughes to pay the Board the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Code section 125.3; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: ~~10/16/08~~
23 10/16/08

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25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant