

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 CHRISTINA THOMAS  
Deputy Attorney General  
4 State Bar No. 171168  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2557  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

12 In the Matter of the Accusation Against:

Case No. 3271

13 **JOSEPH J. SHERMAN, JR.**  
8920 Ortega Road  
14 Atascadero, CA 93422

**A C C U S A T I O N**

15 Designated Representative License No. EXC 16823

16 Respondent.

17  
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 January 6, 2003, the Board of Pharmacy (Board) issued Designated  
23 Representative License No. EXC 16823 to Joseph J. Sherman, Jr. (Respondent). The Designated  
24 Representative License was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on January 1, 2010, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, Department of Consumer Affairs, under  
28 the authority of the following laws. All section references are to the Business and Professions

1 Code unless otherwise indicated.

2 **STATUTORY PROVISIONS**

3 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or  
4 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
5 action during the period within which the license may be renewed, restored, reissued or  
6 reinstated.

7 5. Section 475 states, in pertinent part:

8 "(a) Notwithstanding any other provisions of this code, the provisions of this division  
9 shall govern the denial of licenses on the grounds of:

10 . . . .

11 "(2) Conviction of a crime. . . ."

12 6. Section 480 states, in pertinent part:

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

15 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
16 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
17 board is permitted to take following the establishment of a conviction may be taken when the  
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
19 an order granting probation is made suspending the imposition of sentence, irrespective of a  
20 subsequent order under the provisions of Section 1203.4 of the Penal Code.

21 . . . .

22 "(3)

23 "(A) Done any act that if done by a licentiate of the business or profession in question,  
24 would be grounds for suspension or revocation of license. . . .

25 7. Section 490, subdivision (a), states:

26 "In addition to any other action that a board is permitted to take against a licensee, a board  
27 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if  
28 the crime is substantially related to the qualifications, functions, or duties of the business or

1 profession for which the license was issued."

2 8. Section 4060 states, in pertinent part, that "[n]o person shall possess any controlled  
3 substance, except that furnished to a person upon the prescription of a physician, dentist,  
4 podiatrist, optometrist, veterinarian, or naturopathic doctor . . . or furnished pursuant to a drug  
5 order issued by a certified nurse-midwife . . . a nurse practitioner . . . or a physician assistant . . .  
6 or a pharmacist . . . ."

7 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
8 revoked."

9 10. Section 4301 states, in pertinent part:

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

13 . . . .

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

17 . . . .

18 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
22 practice authorized by the license.

23 . . . .

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

26 . . . .

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
28 duties of a licensee under this chapter. . . . A plea or verdict of guilty or a conviction following a

1 plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The  
2 board may take action when the time for appeal has elapsed, or the judgment of conviction has  
3 been affirmed on appeal or when an order granting probation is made suspending the imposition  
4 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
5 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
6 the verdict of guilty, or dismissing the accusation, information, or indictment.

7 . . . . .  
8 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
9 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
10 federal and state laws and regulations governing pharmacy, including regulations established by  
11 the board or by any other state or federal regulatory agency.

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

13 11. Health and Safety Code section 11350, subdivision (a), states:

14 "Except as otherwise provided in this division, every person who possesses (1) any  
15 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
16 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
17 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
18 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
19 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
20 licensed to practice in this state, shall be punished by imprisonment in the state prison."

21 12. Health and Safety Code section 11377, subdivision (a), states:

22 "Except as authorized by law and as otherwise provided in subdivision (b) or Section  
23 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
24 Business and Professions Code, every person who possesses any controlled substance which is  
25 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
26 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
27 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
28 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section

1 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
2 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
3 than one year or in the state prison."

#### 4 REGULATORY PROVISIONS

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

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

#### 12 COST RECOVERY

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

#### 17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 15. 11. Cocaine, and any cocaine base, is a narcotic drug according to Health and  
19 Safety Code section 11019(e). It is a Schedule I controlled substance, as designated in Health and  
20 Safety Code section 11054(f)(1), and a Schedule II controlled substance, as designated in Health  
21 and Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to Business  
22 and Professions Code section 4022.

#### 23 FIRST CAUSE FOR DISCIPLINE

##### 24 (Conviction of Substantially Related Crime)

25 16. Respondent is subject to disciplinary action under sections 490, 4300, subdivision (a),  
26 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section  
27 1770, in that Respondent was convicted of a crime substantially related to the qualifications,  
28 duties and functions of a licensee which to a substantial degree evidence his present or potential

1     unfitness to perform the functions authorized by his license in a manner consistent with the public  
2     health, safety, or welfare, as follows:

3           a.     On or about November 28, 2006, after pleading nolo contendere, Respondent was  
4     convicted of one misdemeanor count of violating Health and Safety Code section 23152,  
5     subdivision (a) [driving under the influence of alcohol] in the criminal proceeding entitled *The*  
6     *People of the State of California v. Joseph John Sherman, Jr.* (Super. Ct. Santa Barbara County,  
7     2006, No. 1214727). The Court sentenced Respondent to three days in jail, placed him on 3 years  
8     probation, and ordered him to pay fines and penalties.

9           b.     The circumstances of the conviction are that on or about September 5, 2006, Santa  
10     Barbara Police Department officers arrested Respondent after he crashed his car into a pole and  
11     retaining wall, totaled his vehicle, tested positive for driving under the influence with a tested  
12     blood alcohol content level of 0.15%, and admitted to having in his possession cocaine, a  
13     controlled substance and dangerous drug, after it was found in a concealed container in his pants  
14     pocket. Respondent repeatedly asked the officers to "just forget about the cocaine."

15                                 **SECOND CAUSE FOR DISCIPLINE**

16   **(Dangerous Use of Alcohol)**

17           17.     Respondent is subject to disciplinary action under sections 4300, subdivision (a), and  
18     4301, subdivision (h), on the grounds of unprofessional conduct, in that on or about September 5,  
19     2006, Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or  
20     injurious to himself or others, and such use is to the extent of impairing his ability to conduct with  
21     safety to the public the practice authorized by his license. Complainant refers to and by this  
22     reference incorporates the allegations set forth above in paragraph 16, subdivisions (a) and (b),  
23     inclusive, as though set forth fully.

24                                 **THIRD CAUSE FOR DISCIPLINE**

25   **(Unlawful Possession of a Controlled Substance - Cocaine)**

26           18.     Respondent is subject to disciplinary action under sections 4300, subdivision (a), and  
27     4301, subdivision (j), on the grounds of unprofessional conduct, for violating Health and Safety  
28     Code sections 11350, subdivision (a), and 11377, subdivision (a), in that on or about September

1 5, 2006, he possessed cocaine, a controlled substance and dangerous drug, without a valid  
2 prescription. Complainant refers to and by this reference incorporates the allegations set forth  
3 above in paragraph 16, subdivisions (a) and (b), inclusive, as though set forth fully.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Violating Laws Governing Pharmacy)**

6 19. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and  
7 4301, subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in  
8 that on or about September 5, 2006, he possessed cocaine, a controlled substance and dangerous  
9 drug, without a valid prescription. Complainant refers to and by this reference incorporates the  
10 allegations set forth above in paragraph 16, subdivisions (a) and (b), inclusive, as though set forth  
11 fully.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Conduct Warranting Denial of Licensure)**

14 20. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and  
15 4301, subdivision (p), on the grounds of unprofessional conduct, in that on or about September 5,  
16 2006, and November 28, 2006, Respondent's committed acts or conduct would have warranted  
17 denial of a licensure by violating sections, as follows:

18 a. Sections 475, subdivision (a)(2), and 480, subdivision (a)(1). On or about November  
19 28, 2006, Respondent was convicted of a crime. Complainant refers to and by this reference  
20 incorporates the allegations set forth above in paragraph 16, subdivisions (a) and (b), inclusive, as  
21 though set forth fully.

22 b. Section 480, subdivision (a)(3)(A). On or about September 5, 2006, and on or about  
23 November 28, 2006, Respondent committed acts that are grounds for suspension or revocation of  
24 his license. Complainant refers to and by this reference incorporates the allegations set forth  
25 above in paragraphs 16 – 20, inclusive, as though set forth fully.

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PRAYER

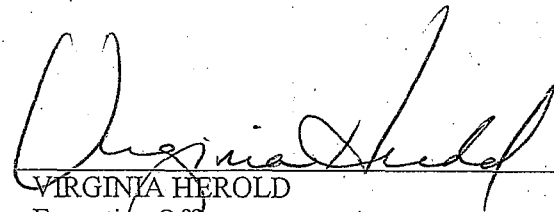
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Designated Representative License No. EXC 16823, issued to Respondent;

2. Ordering Respondent to pay the Board 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: 7/8/09



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

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