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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3206

11 **DENNIS STEVEN TONEY**
12 **P.O. Box 6400**
13 **Eureka, CA 95502**

ACCUSATION

14 **Pharmacist License No. RPH 35784**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about August 25, 1980, the Board of Pharmacy issued Pharmacist License No.
21 RPH 35784 to Dennis Steven Toney (Respondent). The License was in full force and effect at all
22 times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

23
24 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

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

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12
13 STATUTORY PROVISIONS

14 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
15 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
16 not be limited to, any of the following:

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

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

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

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

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

5 (q) Engaging in conduct that subverts or attempts to subvert an investigation of the Board.

6 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
7 drug or dangerous device except upon the prescription of an authorized prescriber.

8 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
9 controlled substance, except that furnished upon a valid prescription/drug order.

10 10. Health and Safety Code section 11170 provides that no person shall prescribe,
11 administer, or furnish a controlled substance for himself or herself.

12 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
13 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
14 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
15 or subterfuge; or (2) by the concealment of a material fact.

16 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
17 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
18 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

19 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
20 person to use or be under the influence of any controlled substance in Schedule II (Health and
21 Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V,
22 except when administered by or under the direction of an authorized licensee.

23
24 COST RECOVERY

25 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

15. Section 4022 of the Code states, in pertinent part:

“‘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.

...

“(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.”

16. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6), and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

17. **Hydromorphone** (hydrochloride) is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(K), and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FACTUAL BACKGROUND

18. Respondent is or was the proprietor (owner-operator, or chief executive of a corporate owner) of two pharmacies licensed by the Board, both under the name Redwood Pharmacies: the first was issued Pharmacy License No. PHY 40292, and is/was located at 2850 F Street, Eureka, CA 95501 (hereinafter “Redwood Henderson”); the second was issued Pharmacy License No. PHY 45220, and is/was located at 1694 Myrtle Avenue, Eureka, CA 95501 (“Redwood Myrtle”).

19. Between in or about March 2007 and in or about October 2007, Respondent ordered and received at Redwood Henderson or Redwood Myrtle, or caused to be ordered and received at Redwood Henderson or Redwood Myrtle, the following controlled substances:

1 a. **Cocaine** powder, ordered and/or received on or about March 13, 2007 (two 5
2 gram bottles), June 15, 2007 (two 5 gram bottles), and October 1, 2007 (two 5 gram bottles);

3 b. **Hydromorphone** powder, ordered and/or received on or about June 15, 2007
4 (one 25 gram bottle), and October 1, 2007 (one 25 gram bottle).

5 20. Other employees of the pharmacy or pharmacies noted and questioned the purchases,
6 and were told by Respondent that the purchased drugs were kept in a separate locked safe in each
7 pharmacy, apart from other controlled substances, to which only Respondent had access.

8 21. On or about November 2, 2007, Redwood Henderson was the subject of an inspection
9 by Board Inspector(s). Respondent was not present during the inspection. During the course of
10 the inspection, Respondent caused a key to be delivered to the pharmacy, with a note specifying it
11 would open the separate locked safe. Inside the safe, the Inspector(s) found two 5 gram bottles of
12 **cocaine** powder. The bottles were sealed with "pharmacy tape" rather than the seal that would be
13 used by a manufacturer or distributor. The Inspector(s) removed the two bottles as evidence. The
14 Inspector(s) spoke to Respondent by telephone, and Respondent stated that the two bottles found
15 in the safe were the two ordered and/or received in March 2007. He further stated that there were
16 additional bottles of **cocaine**, and of **hydromorphone**, located in the safe at Redwood Myrtle.

17 22. On or about November 2, 2007, Redwood Myrtle was the subject of an inspection by
18 Board Inspector(s). Respondent was present during the inspection. Respondent made available
19 for inspection: six 5 gram bottles of **cocaine** powder, all sealed with pharmacy tape, two with a
20 note attached by Respondent indicating they expired; one 100 gram bottle of **hydromorphone**
21 powder, with "outdate" note attached by Respondent (later sealed with pharmacy tape by Board
22 Inspector(s)); and one 25 gram bottle of **hydromorphone** powder (sealed with pharmacy tape).
23 When asked about the types and quantities of drugs, Respondent admitted that these quantities
24 were suspicious, but asserted that he used the **cocaine** powder for compounding "eye drops."
25 When the Inspector(s) asked Respondent to produce prescriptions calling for **cocaine** powder to
26 be used in any form (e.g., for a compounded drug), he was not able to do so. At the Inspector(s)'
27 request, Respondent weighed the contents of the two bottles of **hydromorphone**: the 25 gram
28 bottle contained 24.75 grams of powder; the 100 gram bottle contained 104.47 grams of powder.

1 23. Inspector(s) removed from Redwood Myrtle all six bottles of **cocaine** powder, and
2 the (overweight) 100 gram bottle of **hydromorphone** powder, as evidence.

3 24. At all times during and following both inspections, Respondent represented to the
4 Inspector(s) that the bottles removed from the pharmacies had the same contents they had when
5 they were received from the manufacturer(s)/distributor(s), and/or did not dispute that impression.

6 25. During and/or the conclusion of the inspection of Redwood Myrtle conducted on or
7 about November 2, 2007, the Board Inspector(s) prepared an Inspection Report describing the
8 evidence collected and the observations made, and a Receipt for the evidence collected. At the
9 direction of the Inspector(s), Respondent signed both of these documents.

10 26. On or about December 18, 2007, the two bottles of **cocaine** powder removed from
11 Redwood Henderson, and the six bottles of **cocaine** powder and one bottle of **hydromorphone**
12 powder removed from Redwood Myrtle, were submitted by Board Inspector(s) for lab analysis.

13 27. On or about January 12, 2008, lab analysis results demonstrated that the bottles that
14 purportedly contained **cocaine** powder instead contained lidocaine powder, and the bottle that
15 purportedly contained **hydromorphone** powder likewise contained another unknown substance.

16 28. On or about September 29, 2008, Respondent spoke to the Board Inspector(s) by
17 telephone. When pressed by the Inspector(s), Respondent admitted that the bottles removed by
18 the Inspector(s) on or about November 2, 2007 no longer had the same contents they had when
19 they were received from the manufacturer(s)/distributor(s). Respondent further admitted that he
20 had replaced the **cocaine** powder in each of the eight 5 gram bottles with lidocaine, and the
21 **hydromorphone** powder in the 100 gram bottle with boric acid. Respondent further admitted
22 that he had used/self-administered the **cocaine** and **hydromorphone** powders in the bottles, that
23 he had been using **hydromorphone** "for years," that the **cocaine** was more for "recreational" use,
24 and that he sometimes used the **cocaine** and the **hydromorphone** together. He further admitted
25 that he still had some **hydromorphone** powder at his home at the time of the inspection(s) on or
26 about November 2, 2007, which he used/self-administered subsequent to the inspection(s).

27 29. Respondent also admitted that he had previously had a drug problem, and that he had
28 been "eight years clean" before he relapsed with the use in and/or prior to 2007.

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 30. Respondent is subject to discipline under section 4301(f) of the Code, in that
4 Respondent, as described in paragraphs 18 to 29 above, committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Creation/Signature of False Document(s))

9 31. Respondent is subject to discipline under section 4301(g) of the Code in that
10 Respondent, as described in paragraphs 18 to 29 above, created and/or signed documents that
11 falsely represented the existence or nonexistence of a state of facts.

12
13 THIRD CAUSE FOR DISCIPLINE

14 (Self-Administration of Controlled Substance(s)/Dangerous Drug(s))

15 32. Respondent is subject to discipline under section 4301(h) of the Code, in that
16 Respondent, as described in paragraphs 18 to 29 above, administered one or more controlled
17 substances to himself, and/or self-administered and/or used one or more dangerous drugs to the
18 extent or in a manner dangerous or injurious to himself or another, or to the extent that the use
19 impaired his ability to conduct his pharmacy practice safely.

20
21 FOURTH CAUSE FOR DISCIPLINE

22 (Furnishing of Controlled Substance(s)/Dangerous Drug(s))

23 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
25 in paragraphs 18 to 29 above, furnished to himself or another without a valid prescription, and/or
26 conspired to, assisted or abetted furnishing of, controlled substance(s) and/or dangerous drug(s).

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 34. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 18 to 29 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7
8 SIXTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance(s) by Fraud, Deceit or Subterfuge)

10 35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
12 18 to 29 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14
15 SEVENTH CAUSE FOR DISCIPLINE

16 (Self-Administration/Use of Controlled Substance)

17 21. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
18 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
19 paragraphs 18 to 29 above, self-administered/used, conspired to self-administer/use, and/or
20 assisted in/abetted self-administration/use of a controlled substance, without prescription.

21
22 EIGHTH CAUSE FOR DISCIPLINE

23 (Subverting/Attempting to Subvert Board Investigation)

24 36. Respondent is subject to discipline under section 4301(q) of the Code in that
25 Respondent, as described in paragraphs 18 to 29 above, engaged in conduct that subverted or
26 attempted to subvert an investigation of the Board.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

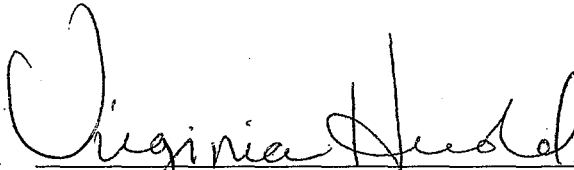
3 37. Respondent is subject to discipline under section 4301 of the Code in that
4 Respondent, as described in paragraphs 18 to 36 above, engaged in unprofessional conduct.

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6
7 PRAAYER

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

- 10 1. Revoking or suspending Pharmacist License No. RPH 35784, issued to Dennis
11 Steven Toney (Respondent);
- 12 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
13 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 14 3. Taking such other and further action as is deemed necessary and proper.

15
16 DATED: 12/2/10


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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