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

11 In the Matter of the Accusation Against:

12 **ERIC DUANE OZIMY**
13 3455 Oak Grove Circle
Stockton, California 95831

14 Registered Pharmacist No. RPH 36956

15 Respondent.

Case No. 3298

OAH Case No.

A C C U S A T I O N

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 16, 1982, the Board of Pharmacy issued Registered
23 Pharmacist License Number RPH 36956 (License) to Eric Duane Ozimy (Respondent). The
24 License will expire on February 28, 2010, unless renewed.

25 JURISDICTION

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

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

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.

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

....
(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 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 or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. 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. 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.

....
5. Section 125.3 of the Code 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.

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 6. Respondent is subject to disciplinary action under Code section 4301,
4 subd. (l) in that Respondent has been convicted of a crime substantially related to the
5 qualifications, functions and duties of a pharmacist. The circumstances are as follows:

6 7. On or about, August 8, 2006, in the Superior Court of California, County
7 of San Joaquin, in the case entitled, *People of the State of California v. Eric Duane Ozimy*
8 (Super. Ct. San Joaquin County, 2006, Case No. ST042341A), Respondent was convicted on his
9 plea of nolo contendere of violating Vehicle Code section 23152(a) (Driving Under the Influence
10 of Alcohol or Drugs), a misdemeanor.

11 8. The circumstances of the crime are that on or about March 17, 2006,
12 Officers Guerrero and Harris of the Stockton Police Department responded to a report of a
13 vehicle collision with injury. Upon their arrival at the scene they discovered a solo vehicle
14 collision had occurred involving Respondent who had struck and severed a tree and then struck a
15 brick planter. Respondent requested medical treatment for facial injuries and body pain and was
16 transported to the county hospital. Officer Asklof of the Stockton Police Department then
17 arrived to assist Officers Guerrero and Harris. Officer Asklof proceeded to the hospital to
18 interview Respondent. During the interview Respondent was incoherent and admitted to
19 consuming alcoholic beverages prior to the crash. Officer Asklof observed Respondent's eyes
20 to be bloodshot and watery, his speech was slurred, and he had an odor of alcohol on his breath.
21 Respondent was placed under arrest by the Stockton Police Department of violating Vehicle
22 Code section 23152(a) (Driving Under the Influence of Alcohol or Drugs), a misdemeanor.
23 Respondent submitted a blood sample for testing. The results of the toxicology analysis showed
24 a Blood Alcohol Content of 0.00% and a positive result for opiates, namely hydrocodone
25 (Vicodin¹) and zolpidem (Ambien²).

26 _____
27 1. Vicodin is a brand name compound consisting of 5, 7.5 or 10 mg hydrocodone bitartrate
28 also known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by
Health and Safety Code section 11056(e)(4), and 325 or 500 mg acetaminophen per tablet, and

1 SECOND CAUSE FOR DISCIPLINE

2 (Corrupt Acts - Acts involving moral turpitude, dishonesty, fraud, deceit or corruption)

3 9. Respondent is subject to disciplinary action under Code section 4301,
4 subd. (f) in that Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit
5 or corruption. The circumstances are detailed above in paragraph 8.

6 THIRD CAUSE FOR DISCIPLINE

7 (Unlawful Self-Administration of Controlled Substances or Dangerous Drugs)

8 10. Respondent is subject to disciplinary action under Code section 4301,
9 subd. (h) in that Respondent unlawfully self-administered controlled substances and/or
10 dangerous drugs. The circumstances are detailed above in paragraph 8.

11 PRIOR DISCIPLINARY MATTERS

12 11. On or about April 28, 1986, Accusation No. 1298 was filed against
13 Respondent alleging causes for disciplinary action, specifically that Respondent admitted to
14 stealing Percodan³ from his employer, Fry's Drug Stores. Effective November 6, 1986,
15 Respondent's License was revoked, the revocation stayed, and placed on probation for a period
16 of two years.

17 12. On or about August 18, 1988, Accusation and Petition to Revoke
18 Probation No. 1408 was filed against Respondent alleging causes for disciplinary action,
19 specifically that Respondent admitted to stealing Percodan from his employer, Stockton Medical
20 Group, and forging a prescription while employed as a pharmacist at California Medical Group.
21 Effective February 25, 1989, Respondent's License was revoked, the revocation stayed, and

22 _____
23 is a dangerous drug within the meaning of Code section 4022, in that under federal law it
24 requires a prescription.

25 2. Ambien is a brand name of zolpidem, a Schedule IV controlled substance as designated
26 by Health and Safety Code section 11057(d)(32), and is a dangerous drug within the meaning
27 of Code section 4022, in that under federal law it requires a prescription

28 3. Percodan is a brand name compound consisting of oxycodone, a Schedule II controlled
substance as designated by Health and Safety Code section 11055(b), and aspirin, and is a
dangerous drug within the meaning of Code section 4022, in that under federal law it requires a
prescription.

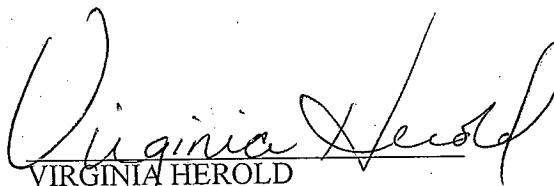
1 placed on probation for a period of five years. Respondent was also suspended from the practice
2 of pharmacy for one year. Respondent's return to practice was contingent upon the approval of
3 the Board and the successful completion of the Pharmacist Recovery Program.

4 PRAYER

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

- 7 1. Revoking or suspending Registered Pharmacist Number RPH 36956,
8 issued to Eric Duane Ozimy.
- 9 2. Ordering Eric Duane Ozimy, to pay the Board of Pharmacy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 10/6/09

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16 
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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