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

12 In the Matter of the Accusation Against:

Case No. 3370

13 **NORMAN BRUCE SHIBLEY**
14 **45446 Genoa Avenue**
Lancaster, CA 93534

A C C U S A T I O N

15 **Pharmacist License No. RPH 39528**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 4, 1985, the Board of Pharmacy (Board) issued Pharmacist
24 License No. RPH 39528 to Norman Bruce Shibley (Respondent). The Pharmacist License
25 expired on December 31, 2008, and has not been renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

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

6 5. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
7 license issued by the Board.

8 6. Section 4301 states:

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

12 ...

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

18 ...

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

22 ...

23 (l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12 7. Section 490 states:

13 “(a) In addition to any other action that a board is permitted to take against a licensee, a
14 board may suspend or revoke a license on the ground that the licensee has been convicted of a
15 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
16 or profession for which the license was issued.

17 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
18 discipline a licensee for conviction of a crime that is independent of the authority granted under
19 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
20 of the business or profession for which the licensee's license was issued.

21 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
22 conviction following a plea of nolo contendere. Any action that a board is permitted to take
23 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
24 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
25 made suspending the imposition of sentence, irrespective of a subsequent order under the
26 provisions of Section 1203.4 of the Penal Code.

27 “(d) The Legislature hereby finds and declares that the application of this section has been
28 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th

1 554, and that the holding in that case has placed a significant number of statutes and regulations
2 in question, resulting in potential harm to the consumers of California from licensees who have
3 been convicted of crimes. Therefore, the Legislature finds and declares that this section
4 establishes an independent basis for a board to impose discipline upon a licensee, and that the
5 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
6 constitute a change to, but rather are declaratory of, existing law.”

7 **REGULATORY PROVISIONS**

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

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

15 **COST RECOVERY**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of Substantially Related Crimes)**

22 10. Respondent has subjected his license to disciplinary action under sections 4301,
23 subdivisions (k) and (l), and 490 of the Code, as defined in California Code of Regulations, title
24 16, section 1770, in that Respondent was convicted of crimes, which are substantially related to
25 the qualifications, functions, or duties of a pharmacist, as follows:

26 a. On or about June 24, 2008, after pleading nolo contendere, Respondent was convicted
27 of one misdemeanor count of violating Vehicle Code section 23152 (b) [driving while having
28 blood alcohol content greater than 0.8%], in the criminal proceeding entitled *The People of the*

1 *State of California v. Norman Bruce Shibley* (Super. Ct. Los Angeles County, 2008, No.
2 7AV10649). Respondent was sentenced to 44 days in county jail, placed on 60 months probation,
3 fined, and ordered to complete an 18 month licensed 2nd Offender Alcohol and Other Drug
4 Education and Counseling Program. The circumstances surrounding the conviction are that on or
5 about September 28, 2007, Respondent was arrested by a Lancaster Deputy Sheriff during a DUI
6 checkpoint for driving under the influence of alcohol and driving under a suspended driver's
7 license.

8 b. On or about July 16, 2007, after pleading guilty, Respondent was convicted
9 of one misdemeanor count of violating Vehicle Code section 23152 (b) [driving while having
10 blood alcohol content greater than 0.8%], in the criminal proceeding entitled *The People of the*
11 *State of California v. Norman Bruce Shibley* (Super. Ct. Orange County, 2007, No. 07CM00734).
12 Respondent was sentenced to 3 years probation, fined, and ordered to complete 20 hours of
13 community service and attend and complete a 6 month Level 2 First Offender Alcohol Program
14 and a Mother's Against Drunk Driving (MADD) Victim's Impact Panel. The circumstances
15 surrounding the conviction are that on or about November 11, 2006, Respondent was arrested by
16 the California Highway Patrol for his involvement in a solo vehicle traffic collision, and his
17 inability to perform field sobriety tests while under the influence of an alcohol beverage.

18 c. On or about September 13, 2005, after pleading guilty, Respondent was convicted
19 of three misdemeanor counts of violating 36 C.F.R. § 2.35(c) [under the influence of alcohol],
20 section 36 C.F.R. § 4.14(b) [open alcohol container], and 36 C.F.R. § 2.10(b)(10) [out of bounds
21 camping] in the United States District Court, Eastern District of California, entitled *United States*
22 *of America v. Norman Bruce Shibley* (United States District Court, Fresno County, 2005, No.
23 6:05-mj-00077-WMW). Respondent was sentenced to 6 months informal probation and fined.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Use of Alcohol Beverages to the Extent to be Dangerous to Oneself)**

26 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
27 the Code, on the grounds of unprofessional conduct, in that on or about June 1, 2005, November
28 11, 2006, and September 28, 2007, Respondent used and consumed of alcoholic beverages to the

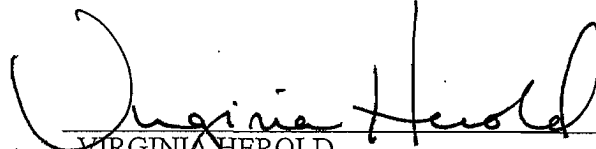
1 extent or in a manner as to be dangerous or injurious to himself or to others. Complainant refers
2 to, and by this reference incorporates, the allegation set forth above in paragraph 10, as though set
3 forth fully.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacist License No. RPH 39528, issued to Respondent;
8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: 12/8/09



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

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