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

11 In the Matter of the Accusation and Petition to
 12 Revoke Probation Against:

Case No. 3408

13 **MAX AUGUST RYDEN**
 14 **P.O. Box 475**
Big Bear Lake, CA 92315

**ACCUSATION AND PETITION TO
 REVOKE PROBATION**

15 **Pharmacy Intern Permit No. INT 18460**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about November 3, 2005, the Board of Pharmacy (Board) issued Pharmacy
 23 Intern Permit No. INT 18460 to Max August Ryden (Respondent). The Pharmacy Intern Permit
 24 will expire on November 30, 2010, unless renewed.

25 3. In a disciplinary action entitled "*In the Matter of the Accusation Against: Max August*
 26 *Ryden*," Case No. 3048, the Board issued a decision, effective August 8, 2008, in which
 27 Respondent's Pharmacy Intern Permit was revoked. However, the revocation was stayed and
 28 Respondent's Pharmacy Intern Permit was placed on probation for a period of five years with

1 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
2 by reference.

3 **JURISDICTION**

4 4. This Accusation and Petition to Revoke Probation is brought before the Board, under
5 the authority of the following laws. All section references are to the Business and Professions
6 Code unless otherwise indicated.

7 **ACCUSATION**

8 **STATUTORY PROVISIONS**

9 5. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
11 within which the license may be renewed, restored, reissued or reinstated.

12 6. Section 4060 states, in pertinent part:

13 "No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
16 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
17 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
18 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
19 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
20 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer."

24 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
25 subject to discipline, including suspension or revocation.

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1 8. Section 4301 states:

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

5

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

9

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

15

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

18

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

23 9. Health and Safety Code section 11170 states, "No person shall prescribe, administer,
24 or furnish a controlled substance for himself."

25 **COST RECOVERY**

26 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
27 law judge to direct a licentiate found to have committed a violation or violations of the licensing

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1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **CONTROLLED SUBSTANCE**

4 11. "Norco," is the brand name for Hydrocodone 10mg./Acetaminophen 325mg. It is a
5 Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(4) and is
6 categorized as a dangerous drug pursuant to section 4022.

7 **FACTUAL SUMMARY**

8 12. On or about August 25, 2008, Respondent enrolled in the Pharmacist Recovery
9 Program (PRP), as required by Term No. 15 of the Stipulated Settlement and Disciplinary Order;
10 Case No. 3048. On or about May 12, 2009, Respondent self-reported a relapse to Maximus, a
11 California State Board of Pharmacy Diversion Program. Between on or about March 31, 2009
12 and May 8, 2009, Respondent participated in a clinical clerkship at USC Pharmacy, in Los
13 Angeles, California. Respondent indicated that he finished his clinical rotation on May 1, 2009
14 and relapsed on May 7, 2009, which lasted four (4) days. During this relapse investigation, by the
15 Clinical Case Manager, Respondent admitted that he obtained, possessed, and self-administered
16 Norco during his recent clinical rotation and concealed his relapse from his worksite monitor at
17 the pharmacy. In addition, Respondent admitted that he was asked to submit to random
18 biological fluid testing on May 8, 2009, but failed to report for testing. Respondent was
19 subsequently terminated from PRP, as a public risk for failure to comply with the terms and
20 conditions of his diversion program contract.

21 **ACCUSATION**

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Obtained and Possessed a Controlled Substance)**

24 13. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
25 (o), for violating section 4060, in that between on or about March 31, 2009 through on or about
26 May 8, 2009, while acting as an Intern Pharmacist, during his clinical clerkship at USC
27 Pharmacy, in Los Angeles, California, Respondent obtained and possessed Norco, a controlled
28

1 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraph 12, as though set forth fully.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Self-Administered a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
6 (j), for violating Health and Safety Code section 11170, in that between on or about March 31,
7 2009 through on or about May 8, 2009, while acting as an Intern Pharmacist, during his clinical
8 clerkship at USC Pharmacy, in Los Angeles, California, Respondent self-administered Norco, a
9 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
10 set forth above in paragraph 12, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Dishonest Acts)**

13 15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
14 that between on or about March 31, 2009 through on or about May 8, 2009, while acting as an
15 Intern Pharmacist, during his clinical clerkship at USC Pharmacy, in Los Angeles, California,
16 Respondent committed dishonest acts by obtaining, possessing, and self-administering, Norco,
17 a controlled substance. In addition, Respondent concealed his diversion relapse from his worksite
18 monitor at the pharmacy. Complainant refers to, and by this reference incorporates, the
19 allegations set forth above in paragraphs 12 through 14, inclusive, as though set forth fully.

20 **PETITION TO REVOKE PROBATION**

21 **FIRST CAUSE TO REVOKE PROBATION**

22 **(Violation of Probation)**

23 16. At all times after the effective date of Respondent's probation, Probation Condition
24 No. 13 stated:

25 "If Respondent violates probation in any respect, the Board, after giving Respondent notice
26 and an opportunity to be heard, may revoke probation and carry out the disciplinary order which
27 was stayed. If a petition to revoke probation or an accusation is filed against Respondent during
28 probation, the Board shall have continuing jurisdiction and the period of probation shall be

1 extended, until the petition to revoke probation or accusation is heard and decided.”

2 17. Respondent’s probation is subject to revocation because he failed to comply with
3 Probation Condition No. 13, referenced above, in that he violated the conditions of his probation.
4 The facts and circumstances regarding this violation are that Respondent has violated the
5 conditions of his probation and is being given another opportunity to be heard and will be subject
6 to revocation and other discipline.

7 **SECOND CAUSE TO REVOKE PROBATION**

8 **(Failure to Complete the Pharmacists Recovery Program)**

9 18. At all times after the effective date of Respondent’s probation, Probation Condition
10 No. 15 stated:

11 “Within 30 days of the effective date of this decision, Respondent shall contact the
12 Pharmacists Recovery Program for evaluation and shall successfully participate in and complete
13 the treatment contract and any subsequent addendums as recommended and provided by the PRP
14 and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.

15 If Respondent is currently enrolled in the PRP, said participation is now mandatory and is
16 no longer considered a self-referral under Business and Professions Code section 4363, as of the
17 effective date of this decision. Respondent shall successfully participate in and complete his
18 current contract and any subsequent addendums with the PRP. Probation shall be automatically
19 extended until Respondent successfully completes his treatment contract. Any person terminated
20 from the program shall be automatically suspended upon notice by the Board. Respondent may
21 not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain
22 jurisdiction to institute action to terminate probation for any violation of this term.”

23 19. Respondent’s probation is subject to revocation because he failed to comply with
24 Probation Condition No. 15, referenced above, in that he failed to successfully complete the
25 Pharmacists Recovery Program. The facts and circumstances regarding this violation are that on
26 or about May 12, 2009, Respondent was terminated from the PRP, as a public risk for obtaining,
27 possessing, and self-administering controlled substances.

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