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9	BEFORE THE BOARD OF PHARMACY						
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA						
11	Case No. 3411						
12	In the Matter of the Accusation Against:						
13	MICHAEL EDWARD BROWN 1038 Abeto Court ACCUSATION						
14	Chula Vista, CA 91910						
15	Pharmacist License No. RPH 37708						
16	Respondent.						
17	Complainant alleges:						
18	PARTIES						
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity						
20	as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.						
21	2. On or about April 13, 1983, the Board issued Pharmacist License Number RPH						
22	37708 to Michael Edward Brown (Respondent). The Pharmacist License was in full force and						
23	effect at all times relevant to the charges brought herein and will expire on February 28, 2011,						
24	unless renewed.						
25	JURISDICTION						
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of						
27	Consumer Affairs, under the authority of the following laws. All section references are to the						
28	Business and Professions Code (Code) unless otherwise indicated.						

- 4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."
- 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

### STATUTORY PROVISIONS

6. Section 4301 of the Code 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:

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"(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.

"

- "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."
  - 7. Section 4327 of the Code states:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

#### COST RECOVERY

8. Section 125.3 of the Code provides, 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

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

### FIRST CAUSE FOR DISCIPLINE

# (Unprofessional Conduct - Performing Duties While Under the Influence of Alcohol)

- 9. Respondent is subject to disciplinary action under section 4301, subdivision (o), for violation of section 4327 in that Respondent Michael Edward Brown used alcoholic beverages while performing duties as a pharmacist at CVS Pharmacy #9113 located at 645 E. Palomar Street, Chula Vista, California. The circumstances are as follows:
- 10. In June 2008, an employee of the CVS Pharmacy #9113 arrived to work at 8:00 a.m. and found Respondent, while on duty as the pharmacist, holding onto the pharmacy counter with both hands holding himself up, and leaning backwards. When the CVS Pharmacy employee talked to Respondent and asked him a question, Respondent did not respond to her. The CVS Pharmacy employee came up next to Respondent, touched his shoulder, and repeated the question, and Respondent finally responded. The employee noted that Respondent smelled strongly of alcohol on both his breath as well as his clothing. Shortly thereafter, Respondent "disappeared" into the bathroom for at least 30 minutes. When Respondent finally come out of the bathroom, he had difficulty standing, and the CVS Pharmacy employee had to help him sit down. The CVS Pharmacy employee called the CVS store manager for assistance. By the time the CVS store manager arrived, Respondent had pulled himself to his feet and was "checking prescriptions." The CVS store manager also smelled alcohol on Respondent.
- 11. On or about August 5, 2008, an employee of CVS Phamacy #9113 found Respondent "passed out" in the back storage room of the pharmacy at about 2:00 p.m. while Respondent was still on duty as the pharmacist. The CVS employee and CVS store manager woke Respondent up and he returned to his work at the CVS pharmacy. On or about August 6, 2008, Respondent was terminated by CVS Pharmacies for working while intoxicated.

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# SECOND CAUSE FOR DISCIPLINE

# (Unprofessional Conduct - Using Alcoholic Beverages to Extent Dangerous to Self and Others)

Respondent is subject to disciplinary action under section 4301, subdivision (h), in that between February 20, 2008 and August 5, 2008 Respondent Michael Edward Brown used alcoholic beverages to an extent dangerous to himself and others while performing duties as a pharmacist at CVS Pharmacy # 9113 located at 645 E. Palomar Street, in Chula Vista, California as set forth in paragraphs 9 through 11, above, which are incorporated here by this reference.

## **PRAYER**

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

- Revoking or suspending Pharmacist License Number RPH 37708 issued to Respondent Michael Edward Brown.
- Ordering Respondent Michael Edward Brown to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3.	Taking such other and fu	rther action	as deemed	necessary as	d proper.
DATED: _	1/25/10	_ \ )	Leja GINIA NER	ia X	edd
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Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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