

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2141
Facsimile: (619) 645-2061
8 *Attorneys for Complainant*

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. 3412

13 **WILLIAM ANDREW ALLEN, RPH**
2748 Villas Way
14 **San Diego, CA 92108**

A C C U S A T I O N

15 **Pharmacist License No. RPH 54535**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about May 12, 2003, the Board of Pharmacy issued Pharmacist License
23 Number RPH 54535 to William Andrew Allen (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on April 30,
25 2011, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

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

11 **STATUTORY PROVISIONS**

12 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
13 revoke a license on the ground that the licensee has been convicted of a crime substantially
14 related to the qualifications, functions, or duties of the business or profession for which the
15 license was issued.

16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a
18 board within the department pursuant to law to deny an application for a license or to
19 suspend or revoke a license or otherwise take disciplinary action against a person who
20 holds a license, upon the ground that the applicant or the licensee has been convicted
21 of a crime substantially related to the qualifications, functions, and duties of the
22 licensee in question, the record of conviction of the crime shall be conclusive
23 evidence of the fact that the conviction occurred, but only of that fact, and the board
24 may inquire into the circumstances surrounding the commission of the crime in order
25 to fix the degree of discipline or to determine if the conviction is substantially related
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"
28 and "registration."

8. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, 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.

///

1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a _____," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to use
4 or order use of the device.

4 (c) Any other drug or device that by federal or state law can be lawfully
5 dispensed only on prescription or furnished pursuant to Section 4006.

5 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any
6 controlled substance, except that furnished to a person upon the prescription of a physician,
7 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

8 10. Section 4301 of the Code states:

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

12

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

16

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

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

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

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.

3 **REGULATORY PROVISIONS**

4 11. California Code of Regulations, title 16, section 1669 states:

5

6 (b) When considering the suspension or revocation of a facility or a personal
7 license on the ground that the licensee or the registrant has been convicted of a crime,
8 the board, in evaluating the rehabilitation of such person and his present eligibility for
9 a license will consider the following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with all terms of parole, probation,
13 restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

23 **COST RECOVERY**

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

28 **DRUGS**

14. Dextroamphetamine, sold under the brand name Dexedrine, is a Schedule II
controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(1),
and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 15. Marijuana is a Schedule I controlled substance as designated by Health and Safety
2 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
3 Professions Code section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(June 8, 2005 Criminal Conviction for Driving**

6 **Under the Influence of Alcohol on February 24, 2005)**

7 16. Respondent subjected his license to discipline under sections 490 and 4301,
8 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
9 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

10 a. On or about June 8, 2005, in a criminal proceeding entitled *People of the*
11 *State of California v. William A. Allen*, in San Diego County Superior Court, case number
12 M956959, Respondent was convicted on his plea of guilty for violating Vehicle Code section
13 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor.

14 b. As a result of the conviction, on or about June 8, 2005, Respondent was
15 sentenced to five years summary probation, 180 days in the county jail (suspended), completion
16 of a MADD impact panel, completion of the education component of the First Conviction
17 Program, and payment of fines, fees, and restitution in the amount of \$1,750. Respondent was
18 ordered not to drive with a measureable amount of alcohol/drugs in his system.

19 c. The circumstances that led to the conviction were that on or about
20 February 24, 2005, Respondent was arrested by the California Highway Patrol for driving under
21 the influence of alcohol.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(January 27, 2009 Criminal Conviction for Driving**

24 **Under the Influence of Alcohol & Drugs on April 6, 2008)**

25 17. Respondent subjected his license to discipline under sections 490 and 4301,
26 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
27 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

28 ///

1 a. On or about January 27, 2009, in a criminal proceeding entitled *People of*
2 *the State of California v. William Andrew Allen*, in San Diego County Superior Court, case
3 number M064687, Respondent entered a plea of no contest, which the court accepted as a plea of
4 guilty, and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under
5 the combined influence of alcohol and drugs, a misdemeanor.

6 b. As a result of the conviction, on or about January 27, 2009, Respondent
7 was sentenced to five years summary probation, standard alcohol conditions, completion of a
8 MADD impact panel, and payment of fines, fees, and restitution in the amount of \$1,842. On or
9 about March 4, 2009, Respondent was ordered to complete a Multiple Conviction Program.

10 c. The circumstances that led to the conviction were that on or about the
11 evening of April 6, 2008, patrol officers with the San Diego Police Department conducted a
12 traffic stop on Respondent after he was observed driving his SUV in downtown San Diego
13 without the headlights on, failing to come to a complete stop at an intersection, and making an
14 illegal U-turn. As the officer activated his emergency lights, Respondent side-swiped a parked
15 vehicle as it yielded to the right. Respondent immediately got out of his vehicle and began
16 making statements about being in violation of his DUI probation. The officers noted that
17 Respondent spoke rapidly and appeared hyper, but his speech was slurred. His gait was unsteady,
18 his eyes were watery and glassy and he had the odor of an alcoholic beverage on his breath.
19 Respondent told the officer he was also taking the prescription medications Nasinex and Lexapro,
20 as well as Claritin. Respondent insisted several times that he knew he was over the limit and did
21 not want to be tested. Respondent failed the horizontal gaze nystagmus test. Based on
22 Respondent's poor driving, his objective symptoms of intoxication, and his statements,
23 Respondent was placed under arrest for driving under the influence. In a search of Respondent's
24 vehicle incident to his arrest, the officers found 1.4 grams of marijuana wrapped in foil, a pipe
25 used for smoking marijuana, and two Dexedrine pills. Respondent told the officer that the pills
26 did not belong to him and that they must have fallen out of a prescription bottle he had delivered
27 to a customer. Respondent was arrested and taken to police headquarters for booking.
28 Respondent requested a breath test and gave two samples that measured with a blood alcohol

1 content (BAC) of 0.05%. Because Respondent appeared too impaired for a 0.05 percent BAC,
2 the officer obtained two samples of Respondent's blood. The blood samples subsequently tested
3 positive for cannabinoids (marijuana).

4 18. On November 19, 2008, an investigator with the Board spoke to Respondent via
5 telephone. When the investigator asked Respondent about the marijuana found in his car,
6 Respondent stated that the marijuana belonged to him and that he smoked it every now and then.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Multiple Misdemeanor Convictions Involving Alcohol)**

9 19. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
10 Code in that on or about June 8, 2005, and January 27, 2009, in San Diego County Superior
11 Court, Respondent was twice convicted of driving under the influence of alcohol and/or drugs, in
12 violation of Vehicle Code section 23152, subdivision (a) as described in paragraphs 16-18, above.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Self-Administration of a Controlled Substance)**

15 20. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
16 the Code in that on or about April 6, 2008, Respondent tested positive for cannabinoids/Delta-9-
17 THC (marijuana) as detailed in paragraph 17, above. Respondent further admitted to a Board
18 investigator on or about November 19, 2008, that the marijuana found in his vehicle belonged to
19 him and that he smoked it now and then. The self-administration of an illegal controlled
20 substance constitutes unprofessional conduct and is substantially related to the qualifications,
21 duties, and functions of a pharmacist.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Violation of California Statutes Regulating
24 Controlled Substances & Dangerous Drugs)**

25 21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
26 Code in that on or about on or about April 6, 2008, Respondent possessed dextroamphetamine
27 and marijuana without a prescription in violation of Business and Professions Code sections 4022
28 and 4060 regulating controlled substances and dangerous drugs, as detailed in paragraphs 17-18,

1 above. Such conduct is substantially related to the qualifications, duties, and functions of a
2 pharmacist.

3 **PRAYER**

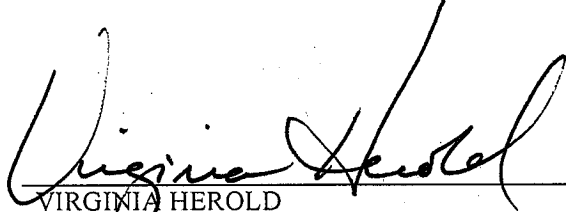
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 54535, issued to William
7 Andrew Allen;

8 2. Ordering William Andrew Allen to pay the Board of Pharmacy the reasonable costs
9 of the investigation and enforcement of this case, pursuant to Business and Professions Code
10 section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 10/27/09



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

15
16
17
18
19 SD2009804619
20
21
22
23
24
25
26
27
28