

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3478

13 **THOMAS R. SIMPSON**
P.O. Box 580398
14 Elk Grove, CA 95758

ACCUSATION

15 Pharmacist License No. RPH 26687

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, Department of Consumer Affairs.

21 2. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist License
22 Number RPH 26687 to Thomas R. Simpson (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on October 31,
24 2011, unless renewed.

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1 STATUTORY AND REGULATORY PROVISIONS

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 unless otherwise indicated.

5 4. Section 101.1(b) of the Code states:

6 "(1) In the event that any board, as defined in Section 477, becomes inoperative or is
7 repealed in accordance with the act that added this section, or by subsequent acts, the Department
8 of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes,
9 responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its
10 executive officer.

11 5. Section 118, subdivision (b), of the Code provides that the
12 suspension/expiration/surrender/cancellation of a license shall not deprive the
13 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
14 within which the license may be renewed, restored, reissued or reinstated.

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

19 7. Section 480 provides in pertinent part that the Board may deny a license to an
20 applicant who has been convicted of a crime. A conviction means a plea or verdict of guilty of a
21 plea of nolo contendere.

22 8. Section 492 of the Code states:

23 "Notwithstanding any other provision of law, successful completion of any diversion
24 program under the Penal Code, or successful completion of an alcohol and drug problem
25 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
26 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
27 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
28 division, from taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.”

3 9. Section 493 of the Code states:

4 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
5 the department pursuant to law to deny an application for a license or to suspend or revoke a
6 license or otherwise take disciplinary action against a person who holds a license, upon the
7 ground that the applicant or the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, and duties of the licensee in question, the record of conviction of the
9 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
10 and the board may inquire into the circumstances surrounding the commission of the crime in
11 order to fix the degree of discipline or to determine if the conviction is substantially related to the
12 qualifications, functions, and duties of the licensee in question.

13 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
14 ‘registration.’”

15 10. Section 4301 of the Code states in pertinent part:

16 “The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct.... Unprofessional conduct shall include but not be limited to....:

18 (h)Use ofalcoholic beverages to an extent or in a manner as to be dangerous or
19 injurious to oneself, or to any other person or to the public.....

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

23 (l) The conviction of a crime substantially relate to the qualifications, functions and
24 duties of a licensee.

25 (p) Actions or conduct that would have warranted denial of a license.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 11. Respondent is subject to disciplinary action under sections 480 and 4301(I) in that
4 respondent was convicted on November 1, 2007 of violation of Vehicle Code section 23152(B),
5 Driving under the influence. The circumstances are as follows:

6 12. On or about August 10, 2007 in Capitola, California, respondent was observed at
7 approximately 1 a.m. traveling northbound on a one-way southbound street. Respondent
8 admitted to the arresting officer to consuming two glasses of champagne and several medications
9 including but not limited to Priolsec, Lofibra, Klonopin and Mysoline. Respondent further
10 admitted he was aware he was not to concurrently consume the medications and alcohol. On
11 November 1, 2007 respondent pled no contest to driving with a blood alcohol level of .08% or
12 higher.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct Denial of License)

15 13. Respondent is subject to disciplinary action under section 480 and 4301 (p) in that
16 respondent's actions of multiple criminal convictions are grounds for denial of a license. The
17 circumstances are as follows:

18 14. Paragraphs 11 and 12 are incorporated herein as though set forth at length.
19 Respondent was convicted in Riverside County on or about December 16, 2002 for driving under
20 the influence a violation of Vehicle Code section 23152(A) by a plea of no contest. Multiple
21 criminal convictions are grounds to deny a license to an applicant.

22 THIRD CAUSE FOR DISCIPLINE

23 (Conduct Dangerous to Self or Others)

24 15. Respondent is subject to disciplinary action under section 4301(h) in that respondent
25 consumed alcohol and medications to the point he was a danger to himself and others. The
26 circumstances are as follows:

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1 16. Paragraphs 11 and 12 are incorporated herein as though set forth at length. In doing
2 the things set forth in paragraphs 11 and 12 respondent was a danger to himself and others by
3 operating a vehicle after consuming alcohol and medications.

4 FOURTH CAUSE FOR DISCIPLINE

5 (Multiple Convictions)

6 17. Respondent is subject to disciplinary action under section 4301(k) for multiple
7 convictions. The circumstances are as follows:

8 18. Paragraphs 11 through 14 are incorporated herein as though set forth at length.
9 Respondent has multiple convictions for driving under the influence in violation of section 4301
10 (k).

11 FIFTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct-crime substantially related)

13 19. Respondent is subject to disciplinary action under section 4301(l) on grounds the
14 criminal convictions are substantially related to the qualifications, functions and duties of a
15 licensee. The circumstances are as follows:

16 20. Paragraphs 11 through 14 are incorporated herein as though set fourth at length.
17 Respondent's multiple convictions are substantially related to the qualifications, functions and
18 duties of a licensee.

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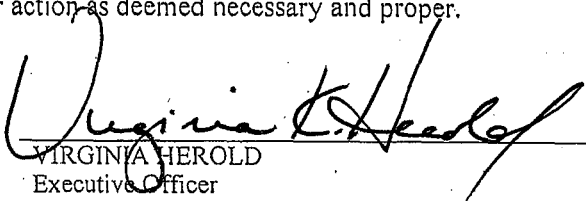
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PRAYER

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:

1. Revoking or suspending Pharmacist License Number RPH 26687, issued to Thomas R. Simpson Thomas R. Simpson.
2. Ordering Thomas R. Simpson 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 further action as deemed necessary and proper.

DATED: 1/25/10


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

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