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

13 In the Matter of the Accusation Against:

Case No. 3753

14 **JOHN STOCKER**
15 **P. O. Box 521**
16 **Cabazon, CA 92230**

A C C U S A T I O N

17 **Pharmacist License No. RPH 46011**

Respondent.

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 March 19, 1993, the Board of Pharmacy issued Pharmacist License
23 Number RPH 46011 to John Stocker (Respondent). The Pharmacist License expired on July 31,
24 2010, and has not been 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.

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

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

7 STATUTORY PROVISIONS

8 6. Section 4022 of the Code states:

9 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, and includes the following:

10 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
11 without prescription," "Rx only," or words of similar import.

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

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

16 7. Section 4301 of the Code states:

17 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
18 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

19

20 (h) The administering to oneself, of any controlled substance, or the use of any
21 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
22 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.

23

24 DRUGS

25 8. Hydromorphone is a Schedule II controlled substance as designated by Health and
26 Safety Code Section 11055, subdivision (b)(1)(K) and is a dangerous drug pursuant to Business
27 and Professions Code section 4022.

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1 Superior Court, case number BAM036039, charging Respondent with violating Vehicle Code
2 section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section
3 23152, subdivision (b), driving with a BAC of .08 percent or higher, misdemeanors. On
4 September 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty.
5 Respondent was released on his own recognizance and signed an agreement promising to appear
6 at all times as ordered by the Court or magistrate, and that failure to appear would be charged as
7 a separate and distinct offense.

8 c. Following multiple motions to continue the trial date, Respondent failed to
9 appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
10 remains active.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct -- Driving Under the Influence of**
13 **Alcohol/Drugs on December 28, 2008)**

14 12. Respondent subjected his license to discipline under section 4301, subdivision (h)
15 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
16 circumstances are as follows:

17 a. On or about the evening of December 28, 2008, a California Highway
18 Patrol (CHP) Officer responded to assist a Riverside County Sheriff's Deputy with a DUI
19 investigation. The Deputy related that he had observed Respondent standing next to his Mazda,
20 which was parked on the side of a busy thoroughfare. Respondent's trousers were down around
21 his ankles, he had numerous fresh and bleeding abrasions to his head, he was staggering about
22 dramatically, and he was covered in his own feces. The CHP Officer conducted a records check
23 and discovered Respondent's driver's license had been suspended as a result of the DUI arrest
24 detailed in paragraph, 12, above. The officer noticed the distinct odor of an alcoholic beverage
25 emanating from Respondent's breath and person. Respondent was stuporous, he had red, watery
26 eyes, slack facial features, and was very disheveled in appearance. Respondent told the officer he
27 had consumed one beer and one glass of wine earlier, and that he had consumed one-half of a
28 tablet of Norco for pain. Respondent stated that he was on his way home but needed to stop to

1 exit his vehicle and walk around it in a confused manner. The vehicle quickly became engulfed
2 in fire. The CHP Officer called the fire department, and then yelled at Respondent to get away
3 from the vehicle. After several verbal commands, Respondent slowly stumbled his way to the
4 officer. Respondent told the CHP Officer that he had a flat tire and had been looking for a place
5 to pull over. The officer checked Respondent's name and birth date and discovered his driving
6 privileges had been suspended. When speaking to Respondent, the officer noted a strong odor of
7 an alcoholic beverage emanating from Respondent. His speech was very slurred, and his eyes
8 were red and watery. Respondent told the officer he had consumed one beer earlier in the
9 evening. The CHP Officer had to hold Respondent's upper arm to assist him with his balance.
10 Based on Respondent's condition, he was asked to perform only two field sobriety tests.
11 Respondent was unable to perform the tests as explained and demonstrated. Respondent was
12 arrested for driving under the influence of alcohol. Respondent provided a blood sample, which
13 tested at .15 % blood alcohol concentration (BAC).

14 b. On or about May 21, 2009, a complaint was filed in a criminal proceeding
15 entitled *People of the State of California v. John Edward Stocker*, in Riverside County Superior
16 Court, case number BAM038434, charging Respondent with violating Vehicle Code section
17 23152, subdivision (a), driving under the influence of alcohol, with an additional allegation that
18 Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle Code section
19 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle Code section
20 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors. On September
21 9, 2008, Respondent was arraigned on the charges and entered a plea of not guilty. Respondent
22 was released on his own recognizance signing an agreement promising to appear at all times as
23 ordered by the Court or magistrate, and that failure to appear would be charged as a separate and
24 distinct offense.

25 c. Following multiple motions to continue the trial date, Respondent failed to
26 appear at a trial readiness conference on June 10, 2010. A warrant was issued for his arrest and
27 remains active.

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1 FOURTH CAUSE FOR DISCIPLINE

2 **(Unprofessional Conduct -- Driving Under the Influence of Alcohol on July 28, 2009)**

3 14. Respondent subjected his license to discipline under section 4301, subdivision (h)
4 of the Code in that he used alcohol to an extent to be dangerous to himself and others. The
5 circumstances are as follows:

6 a. On or about the evening of July 28, 2009, a CHP Officer was patrolling the
7 area of Cabazon when he observed a Mazda Miata, driven by Respondent, driving in an erratic
8 manner. The officer conducted a traffic stop. When speaking to Respondent, the officer smelled
9 the odor of an alcoholic beverage emanating from Respondent; his speech was slow and slurred,
10 and his eyes were red and watery. The officer checked Respondent's name and birth date and
11 determined that his driving privileges had been suspended. Respondent told the officer he had
12 consumed one glass of wine at the casino earlier in the evening. Respondent stumbled as he
13 exited his vehicle. The CHP officer noted that Respondent had obvious back problems and some
14 bandaged injuries. Based on Respondent's condition, he was asked to perform only two field
15 sobriety tests. Respondent was unable to perform the tests as explained and demonstrated.
16 Respondent was arrested for driving under the influence of alcohol. Respondent's vehicle was
17 searched and the officer located an opened can of Bud Light beer under the driver's seat. The can
18 was cool and half full. Respondent provided a blood sample which tested at .27 % BAC.

19 b. On or about September 25, 2009, a complaint was filed in a criminal
20 proceeding entitled *People of the State of California v. John Edward Stocker*, in Riverside County
21 Superior Court, case number BAM039567, charging Respondent with violating Vehicle Code
22 section 23152, subdivision (a), driving under the influence of alcohol, with an additional
23 allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or more; Vehicle
24 Code section 23152, subdivision (b), driving with a BAC of .08 percent or higher; and Vehicle
25 Code section 14601.5, subdivision (a), driving on a suspended driver's license, misdemeanors.
26 Respondent failed to appear at his October 15, 2009 arraignment. A warrant was issued for his
27 arrest and remains active.

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DISCIPLINARY CONSIDERATIONS

15. To determine the degree of discipline, if any, to be imposed on Respondent,
Complainant alleges:

a. On or about May 4, 2010, the Board issued Citation Number CI 2009 43004 to Respondent. The Board's investigation established that Respondent committed the following violations while employed as a pharmacist-in-charge of a Kmart Pharmacy:

(1) Respondent violated California Code of Regulations, section 1714, subdivision (d), in that from April 30, 2007 to January 31, 2009, at least 17,792 tablets of controlled substances and 1630 ml of controlled substances were lost from his pharmacy due to poor recordkeeping.

(2) Respondent violated California Code of Regulations, section 1707.2, subdivision (f) in that at a Board inspection on November 18, 2009, there was no Notice to Consumers posted in a place conspicuous to and readable by pharmacy consumers.

(3) Respondent violated Business and Professions Code section 4342, subdivision (b) in that on November 18, 2009, a Board inspector found expired Lipram-PN, Norco, Trileptal, Zebutal, Lescol XL, Clorazepate, Imipramine, and Prednisone on the pharmacy shelves, ready to be dispensed.

(4) Respondent violated Business and Professions Code section 4076, subdivision (a)(11)(A) in that on November 18, 2009, the Board inspector found three prescription bottles that did not state the physical description of the dispensed medication on the prescription label.

(5) Respondent violated 21 C.F.R. section 1305.05 in that on November 18, 2009, the Board inspector located DEA-222 medication order forms signed by a person who did not have a power of attorney allowing him to sign and order Schedule II controlled substances.

(6) Respondent violated Business and Professions Code section 4305, subdivision (c) in that Respondent was terminated from his employment as pharmacist-in-charge in September 2009 and he did not report this fact to the Board within 30 days.

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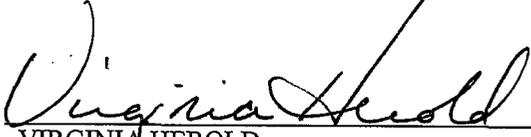
b. As a result of the Citation, Respondent was fined in the amount of \$2,400.00, due on or before June 3, 2010. Respondent has not paid the fine.

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 46011, issued to John Stocker;
2. Ordering John Stocker 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: 2/3/11



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

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