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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3756

11 **GARY FULTON CALLAHAN**  
12 23 Los Coyotes Drive  
13 Phillips Ranch, CA 91766

**A C C U S A T I O N**

14 Designated Representative License No. EXC 16432

15 Respondent.

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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 (Board).  
22 2. On or about November 30, 2001, the Board issued Designated Representative License  
23 No. EXC 16432 to Gary Fulton Callahan (Respondent). The Designated Representative License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 November 1, 2011, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 STATUTORY PROVISIONS

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

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

9 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
10 revoked."

11 7. Section 4301 states, in pertinent part:

12 "The board shall take action against any holder of a license who is guilty of unprofessional  
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15 ....

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

19 ....

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
21 duties of a licensee under this chapter. . . .

22 ....

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

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1 **REGULATORY PROVISION**

2 8. California Code of Regulations, title 16, section 1770, states:

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

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Convictions of Substantially Related Crimes)**

16 10. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
17 (I), on the grounds of unprofessional conduct, in that he was convicted of crimes substantially  
18 related to the qualifications, functions, and duties of a designated representative which to a  
19 substantial degree evidence his present or potential unfitness to perform the functions authorized  
20 by his license in a manner consistent with the public health, safety, or welfare, as follows:

21 a. On or about December 16, 2008, after pleading nolo contendere, Respondent was  
22 convicted of one misdemeanor count of violating Penal Code section 647(b) [disorderly conduct:  
23 prostitution] in the criminal proceeding entitled *The People of the State of California v. Gary*  
24 *Fulton Callahan* (Super. Ct. San Bernardino County, 2008, No. MWV806531). The Court  
25 sentenced Respondent to 30 days in jail, placed him on 24 months probation, ordered him to  
26 complete an HIV Antibody Test and an AIDS Education Program, and ordered him to stay away  
27 from: Hold Blvd from Benson to Guasti and Mission Blvd from San Antonio to Benson.

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1 b. The circumstances underlying the conviction are that on or about October 2, 2008,  
2 Respondent solicited an act of prostitution from an undercover Ontario Police Department officer.

3 c. On or about October 3, 2006, after pleading nolo contendere, Respondent was  
4 convicted of one misdemeanor count of violating Penal Code section 647(a) [disorderly conduct:  
5 solicit lewd act] in the criminal proceeding entitled *The People of the State of California v. Gary*  
6 *Fulton Callahan* (Super. Ct. San Bernardino County, 2006, No. MWV106290). The Court  
7 sentenced Respondent to one (1) day in jail, placed him on 24 months probation, ordered him to  
8 complete an HIV Antibody Test and an AIDS Education Program, and ordered him to stay away  
9 from Mustang Book Store.

10 d. The circumstances underlying the conviction are that on or about February 16, 2006,  
11 Respondent was viewed performing a lewd act upon himself at Mustang Book Store, Upland,  
12 California.

13 e. On or about June 21, 2005, after finding of guilty by a jury, Respondent was  
14 convicted of one misdemeanor count of violating Penal Code section 647(b) [solicit act of  
15 prostitution] in the criminal proceeding entitled *The People of the State of California v. Gary*  
16 *Fulton Callahan* (Super. Ct. Los Angeles County, 2005, No. 5PM03120). The Court placed  
17 Respondent on three (3) years of probation, ordered him to complete an AIDS Test, and ordered  
18 him to stay away from Holt Avenue, City of Pomona, unless he had lawful business.

19 f. The circumstances underlying the conviction are that on or about March 24, 2005,  
20 Respondent solicited an act of prostitution from an undercover Pomona Police Department  
21 officer.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

24 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), on  
25 the grounds of unprofessional conduct, in that he committed acts involving moral turpitude,  
26 dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates  
27 the allegations set forth above in paragraph 10, subparagraphs a – f, inclusive, as though set forth  
28 fully.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct / Violate Pharmacy Law)**

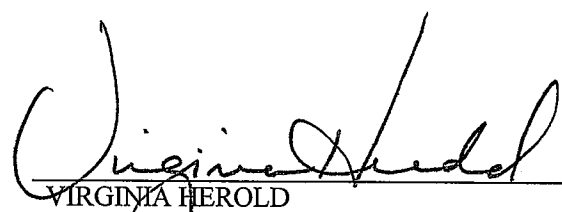
12. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10 – 11, inclusive, as though set forth fully.

**PRAYER**

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

1. Revoking or suspending Designated Representative License No. EXC 16432, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/8/11



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

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