1 2 3 4 5 6 7 8	EDMUND G. BROWN JR. Attorney General of California DIANN SOKOLOFF Supervising Deputy Attorney General TIMOTHY J. MCDONOUGH Deputy Attorney General State Bar No. 235850 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2134 Facsimile: (510) 622-2270 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 3865
12	CHARLES WALKER191 Lippizan Dr.Vallejo, CA 94591A C C U S A T I O N
13	Pharmacist No. RPH 32316
15	Respondent.
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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 August 14, 1978, the Board of Pharmacy issued Pharmacist License
23	Number RPH 32316 to Charles Walker (Respondent). The Pharmacist was in full force and
24	effect at all times relevant to the charges brought in this Accusation and will expire on December
25	31, 2011, unless renewed.
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	Accusation

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 unless otherwise indicated.
5	4. Section 4300 of the Code states:
6	"(a) Every license issued may be suspended or revoked.
7	"(b) The board shall discipline the holder of any license issued by the board, whose default
8	has been entered or whose case has been heard by the board and found guilty, by any of the
9	following methods:
10	"(1) Suspending judgment.
11	"(2) Placing him or her upon probation.
12	"(3) Suspending his or her right to practice for a period not exceeding one year.
13	"(4) Revoking his or her license.
14	"(5) Taking any other action in relation to disciplining him or her as the board in its
15	discretion may deem proper.
16	•••
17	"(e) The proceedings under this article shall be conducted in accordance with Chapter 5
18	(commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
19	shall have all the powers granted therein. The action shall be final, except that the propriety of
20	the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
21	Civil Procedure."
22	5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23	surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24	disciplinary action during the period within which the license may be renewed, restored, reissued
25	or reinstated.
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	Accusation

1	STATUTORY AND REGULATORY PROVISIONS
2	6. Section 4301 of the Code states, relevant part:
3	"The board shall take action against any holder of a license who is guilty of unprofessional
4	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
5	Unprofessional conduct shall include, but is not limited to, any of the following:
6	••••
7	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous
8	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
9	oneself, to a person holding a license under this chapter, or to any other person or to the public, or
10	to the extent that the use impairs the ability of the person to conduct with safety to the public the
11	practice authorized by the license.
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13	"(j) The violation of any of the statutes of this state, or any other state, or of the United
14	States regulating controlled substances and dangerous drugs."
15	7. Section 4060 of the Code states:
16	"No person shall possess any controlled substance, except that furnished to a person upon
17	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19	nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
23	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26	labeled with the name and address of the supplier or producer.
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"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

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8. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion 5 program under the Penal Code, or successful completion of an alcohol and drug problem 6 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of 7 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 8 9 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for 10 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a 11 record pertaining to an arrest. 12

"This section shall not be construed to apply to any drug diversion program operated by any
agency established under Division 2 (commencing with Section 500) of this code, or any
initiative act referred to in that division."

9. Section 4022 of the Code states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
18 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.

"(b) Any device that bears the statement: "Caution: federal law restricts this 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.

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

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1	DRUGS
2	10. Marijuana is a Schedule I controlled substance as designated by Health and Safety
3	Code section 11054, subdivision (d)(13), and a dangerous drug as designated by Business and
4	Professions Code section 4022. It is a hallucinogenic drug.
5	COST RECOVERY
6	11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
7	administrative law judge to direct a licentiate found to have committed a violation or violations of
8	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9	enforcement of the case.
10 11	FIRST CAUSE FOR DISCIPLINE (Unprofessional Conduct-Use of Controlled Substance) (Bus. & Prof. Code §§ 4060 & 4301(h))
12	12. Respondent has subjected his Pharmacist License to disciplinary action under Code
13	sections 4060 and 4301, subdivision (h), in that he was in possession of Marijuana and self-
14	administered Marijuana over a period of several months. Marijuana is a controlled substance and
15	considered a dangerous drug. The circumstances are as follows:
16	13. In June 2008, Respondent became depressed after he sold his pharmacy, which he
17	had owned for 28 years, to Walgreens. He continued to work at the Pharmacy as a Pharmacist
18	after selling it to Walgreens. After working for there for a couple of weeks he began smoking
19	Marijuana a couple of times a week in order to deal with his depression. After the death of a
20	close friend in December of 2009, Respondent began smoking Marijuana everyday to cope with
21	the pain of losing his friend. Respondent was smoking Marijuana until at least February 15,
22	2010.
23	SECOND CAUSE FOR DISCIPLINE (Unprofessional Conduct-Violation of Laws Regarding Controlled Substance)
24	• (Bus. & Prof. Code §§ 4301(j))
25	14. Respondent has subjected his Pharmacist License to disciplinary action under Code
26	section 4301, subdivision (j), in that he violated state and federal laws regarding controlled
27	substances and dangerous drugs. Respondent admitted to smoking Marijuana, a controlled
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	Accusation

1	substance, for several months between June 2009 and February 2010. The circumstances are
2	further explained in paragraph 13, above.
3	PRAYER
4	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
5	Accusation, and that following the hearing, the Board of Pharmacy issue a decision:
6	1. Revoking or suspending Pharmacist License Number RPH 32316, issued to Charles
7	Walker;
8	2. Ordering Charles Walker to pay the Board of Pharmacy the reasonable costs of the
9	investigation and enforcement of this case, pursuant to Business and Professions Code section
10	125.3;
11	3. Taking such other and further action as deemed necessary and proper.
12	$a = 2b^2 h$
13	DATED: 2/23/1/ (reine Kold VIRGINIA HEROLD
14	Executive Officer Board of Pharmacy
15	Department of Consumer Affairs State of California
16	Complainant
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