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8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:	Case No. 3879
12	JOHN PAUL DORE 121 Ellert Street	
13	San Francisco, CA 94410	ACCUSATION
14	Pharmacist License No. RPH 51348	
15	Respondent.	
16	Complainant alleges:	
17	PARTIES	
18	Virginia Herold (Complainant) bring	s this Accusation solely in her official capacity
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
20	2. On or about October 4, 1999, the Board of Pharmacy issued Pharmacist License No.	
21	RPH 51348 to John Paul Dore (Respondent). The License was in full force and effect at all times	
22	relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.	
23		
24	JURISDICTION	
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
26	Consumer Affairs, under the authority of the following laws. All section references are to the	
27	Business and Professions Code (Code) unless otherwise indicated.	
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26...

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

2.7

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

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

- 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 10. Section 4140 of the Code makes it unlawful to possess or have under one's control a hypodermic needle or syringe except when acquired as permitted by the Pharmacy Law.
- 11. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess a controlled substance in Schedule I (except subdivision(s) (d)(13), (14), (15), and (20).).
- 12. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess an opium pipe or other drug paraphernalia.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

15. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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. . . .
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 16. Ecstasy is a street name for Methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(6) and a dangerous drug as designated by Business and Professions Code section 4022.

FACTUAL BACKGROUND

- 17. On or about November 9, 2008, Respondent was involved in a traffic accident in or near Redwood City, CA. When California Highway Patrol officer(s) responded, in an attempt to produce his driver's license Respondent reached into a pocket and produced a used hypodermic needle and syringe. Respondent asserted first that he used this to clean surfaces at work, then that it had been inadvertently put into his pocket. During a search of Respondent's vehicle, a zip-loc baggie was found that contained a green powder subsequently determined to be **Ecstasy/MDMA**. After transport to the hospital, Respondent reportedly failed one or more Field Sobriety Test(s).
- 18. On or about February 10, 2009, on the basis of the incidents described in paragraph 16, Respondent was charged in *People v. John Paul Dore*, Case No. SM361817 in San Mateo County Superior Court, with violating (1) Health and Safety Code section 11377(a) (Possession of Controlled Substance **MDMA**), a misdemeanor; (2) Business and Professions Code section 4140 (Possession of Hypodermic Needle or Syringe), a misdemeanor; and (3) Health and Safety Code section 11364 (Possession of Drug Paraphernalia), a misdemeanor.
- 19. On or about July 1, 2009, Respondent entered a plea of *nolo contendere* to Count (1) (violation of Health and Safety Code section 11377(a)). The remaining counts were dismissed as part of the plea agreement. Respondent was granted a deferred entry of judgment (DEJ) on Count (1), and was diverted from prosecution for eighteen (18) months, criminal proceedings suspended for Respondent to commence and continue a rehabilitation program as directed by Probation, and to comply with other terms and conditions, including fines and fees, and drug testing.

5.

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 No. RPH 51348, issued to John Paul Dore (Respondent);
- 2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 4/5/11

VIRGINIA HEROLD

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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