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

11 In the Matter of the Accusation Against:

Case No. 3885

12 **RICHARD ALLYN REEL**
13 **1308 William Avenue**
14 **Chula Vista, CA 91911**

A C C U S A T I O N

15 **Pharmacist License No. RPH 37626**

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 April 1, 1983, the Board of Pharmacy issued Pharmacist License Number
22 RPH 37626 to Richard Allyn Reel (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless
24 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 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 7. Section 492 of the Code states:

13 Notwithstanding any other provision of law, successful completion of any
14 diversion program under the Penal Code, or successful completion of an alcohol and
15 drug problem assessment program under Article 5 (commencing with section
16 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
17 agency established under Division 2 ([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 professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

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

20 8. Section 493 of the Code states:

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

27 As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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9. Section 4301 of the Code states:

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

....

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

....

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

10. Section 4022 of the Code states

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

1 import, the blank to be filled in with the designation of the practitioner licensed to use
2 or order use of the device.

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

5 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
6 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 12. Section 4060 of the Code states, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished to a person upon the prescription of a physician,
12 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

13 REGULATORY PROVISIONS

14 13. California Code of Regulations, title 16, section 1769, states:

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16 (b) When considering the suspension or revocation of a facility or a personal
17 license on the ground that the licensee or the registrant has been convicted of a crime,
18 the board, in evaluating the rehabilitation of such person and his present eligibility for
19 a license will consider the following criteria:

20 (1) Nature and severity of the act(s) or offense(s).

21 (2) Total criminal record.

22 (3) The time that has elapsed since commission of the act(s) or offense(s).

23 (4) Whether the licensee has complied with all terms of parole, probation,
24 restitution or any other sanctions lawfully imposed against the licensee.

25 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

27 For the purpose of denial, suspension, or revocation of a personal or facility
28 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 his license or registration in a manner consistent with the
public health, safety, or welfare.

1 **COSTS**

2 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUG**

7 16. Cocaine is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &
9 Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(April 30, 2010 Criminal Conviction for Elder Abuse
12 & Making Criminal Threats on November 19, 2009)**

13 17. Respondent subjected his license to discipline under sections 490 and 4301,
14 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
15 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

16 a. On or about April 30, 2010, in a criminal proceeding entitled *People of the*
17 *State of California v. Richard A. Reel*, in San Diego County Superior Court, case number
18 S235101, Respondent was convicted on his plea of guilty for violating Penal Code section 368,
19 subdivision (b)(1), willful cruelty to elder/dependent adult – great bodily injury or death; and
20 Penal Code section 422, making criminal threats, misdemeanors pursuant to Penal Code section
21 17, subdivision (b)(4).

22 b. As a result of the conviction, on or about April 30, 2010, Respondent was
23 sentenced to three years summary probation, and 120 days in the county jail, the execution of
24 which was stayed pending successful completion of probation. Respondent was further ordered
25 to complete a six-month residential rehabilitation program, and pay \$674 in fees and fines. A
26 protective order was issued for the victim.

27 c. The circumstances that led to the conviction were that on or about the morning
28 of November 19, 2009, officers from the Chula Vista Police Department responded to a call of a

1 domestic disturbance. The officers met an elderly woman (Respondent's mother) at the door of
2 the residence. She told the officers that her son was intoxicated, acting irrationally, and was
3 being destructive. The officers encountered Respondent who had a strong odor of alcohol and
4 urine emanating from his person. He was unsteady on his feet and became belligerent with the
5 officers, ordering them out of the house. Respondent walked out of the house towards the
6 exterior garage, turned towards the officers, and took a fighting stance. Respondent advanced
7 towards an officer, however, because he was highly intoxicated, they were able to take him into
8 custody. Respondent threatened to kill the officers, sue the officers, and sue the city. Respondent
9 was handcuffed behind his back but continued to struggle and flail his legs. Respondent
10 attempted to bite one of the officer's hands. The officers assisted Respondent into a patrol
11 vehicle where he continued to threaten the officers. Respondent's mother told the officers that
12 Respondent had lived with her for 16 years. She was deeply in fear of him; he had been
13 extremely verbally abusive and would poke her in the chest with his index finger while yelling at
14 her. She stated that Respondent's drinking and abusive conduct had been escalating. He had
15 threatened to kill her numerous times in the previous months and had threatened to burn down her
16 house. She was afraid to sleep for fear of being assaulted.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

19 18. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
20 Code for unprofessional conduct in that on or about November 19, 2009, as described in
21 paragraph 17, above, Respondent used alcohol in a manner that was dangerous and injurious to
22 himself and others.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Self-Administration of a Controlled Substance)**

25 19. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
26 the Code in that he self-administered cocaine, a controlled substance, on May 7, 2006. The
27 circumstances are as follows:

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1 a. On or about June 30, 2006, in a criminal proceeding entitled *People of the*
2 *State of California v. Richard Allyn Reel*, in San Diego County Superior Court, case number
3 CS202260, Respondent pled guilty to violating Health and Safety Code section 11350,
4 subdivision (a), felony possession of a controlled substance, to wit, cocaine.

5 b. As a result of the plea, on or about June 30, 2006, formal probation was
6 granted for a period of three years, pursuant to Penal Code section 1210. Respondent was given
7 credit for two days served in custody and he was ordered to pay fines and fees in the amount of
8 \$570.00. Respondent was required to successfully complete a drug rehabilitation program, totally
9 abstain from drinking alcohol, not use or possess controlled substances, and to comply with
10 additional terms of probation.

11 c. On or about January 5, 2007, Respondent's sentence was modified by
12 signing a Drug Court contract. At a hearing on March 28, 2008, the court found that Respondent
13 successfully completed Drug Court and the case against him was dismissed.

14 d. The circumstances that led to the criminal proceeding are that on or about
15 the evening of May 7, 2006, an officer from the Chula Vista Police Department was on foot patrol
16 at a local park. The officer observed a Chevrolet SUV with illegally tinted windows. As the
17 officer approached the SUV, the driver (Respondent) started the car and started to back-up. The
18 officer motioned for him to stop. The officer approached Respondent, who rolled down his
19 driver's side window, and obtained Respondent's driver's license. As the officer was speaking to
20 Respondent about his tinted windows, he noticed that Respondent appeared very jumpy. Inside
21 the passenger compartment he noticed a matchbook and inside the center console were
22 approximately 20-30 burnt matches in the cup holder. There was a lighter on the passenger's seat
23 and another lighter under Respondent's left thigh. Respondent's license was reported as
24 suspended by the department's dispatcher. The officer obtained Respondent's permission to
25 search the vehicle. As Respondent exited his vehicle, he turned away from the officer and made a
26 furtive move indicating he had hidden something in his pants or underwear. Respondent was
27 immediately handcuffed. Respondent admitted to the officer that he was trying to hide a glass
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1 pipe inside his underwear that he used to smoke "crack".¹ The pipe was retrieved and taken into
2 evidence. Respondent denied there was crack cocaine in his vehicle, however, officers found a
3 crack rock on the driver's seat, and another rock on the passenger seat which subsequently tested
4 positive for cocaine. Respondent told the officer he obtained the crack from a friend and that he
5 had smoked crack earlier in the day. Respondent was arrested for possession of a controlled
6 substance and controlled substance paraphernalia.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Violation of California Statutes Regulating
9 Controlled Substances & Dangerous Drugs)**

10 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
11 Code for unprofessional conduct in that on or about on or about April 6, 2008, Respondent
12 possessed cocaine and controlled substance paraphernalia, and self-prescribed cocaine as
13 described in paragraph 19, above, in violation of Business and Professions Code sections 4059
14 and 4060 regulating controlled substances and dangerous drugs.

15 **DISCIPLINARY CONSIDERATIONS**

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

18 a. On or about November 21, 1997, in a prior disciplinary proceeding entitled *In*
19 *the Matter of the Accusation Against Richard Allyn Reel*, before the Board of Pharmacy, case
20 number 1913, the Board adopted a stipulation and settlement. It was ordered that Respondent's
21 pharmacist license be revoked. The revocation was stayed and Respondent was placed on
22 probation for five (5) years on various terms and conditions.

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25 ¹ "Crack," the illegal street version of pharmaceutical cocaine, has a rock-like, chunky
26 consistency and ranges in color from off white to beige, yellowish or brownish. Crack cocaine
27 must be smoked, it is not water soluble. Crack cocaine use provides a high that is incredibly
28 potent, due to the way it is ingested. The effects of crack cocaine are felt almost instantly,
quicker than any other drug. The "low" that follows this incredible "high" is what drives the user
to seek another dose, or "hit" of crack cocaine.

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b. As a condition of the stipulation, Respondent admitted to the facts and circumstances of the underlying Accusation in that on November 4, 1994, Respondent unlawfully possessed cocaine, he was under the influence of cocaine, and he illegally possessed a hypodermic syringe.

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 37626, issued to Richard Allyn Reel;
- 2. Ordering Richard Allyn Reel 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: 2/23/11

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

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