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

11 In the Matter of the Accusation Against:  
12 **JOHN CHARLES GARVEY**  
14321 El Dorado Drive  
13 Victorville, CA 92392  
14 **Original Pharmacist License No. RPH 26207**  
15 Respondent.

Case No. 3937  
**A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official  
20 capacity as the Executive Officer of the California State Board of Pharmacy.  
21 2. On or about July 15, 1969, the Board of Pharmacy issued Original Pharmacist  
22 License Number RPH 26207 to John Charles Garvey ("Respondent"). The Original Pharmacist  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on October 31, 2011, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4011 of the Code provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and  
3 Professions Code, Sec 4000 et seq.)] and the Uniform Controlled Substances Act (Division 10  
4 (commencing with Section 11000) of the Health and Safety Code)."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
6 revoke a license issued by the Board.

7 6. Section 118(b) of the Code provides:

8 "The suspension, expiration, or forfeiture by operation of law of a license  
9 issued by a board in the department, or its suspension, forfeiture, or  
10 cancellation by order of the board or by order of a court of law, or its  
11 surrender without the written consent of the board, shall not, during any  
12 period in which it may be renewed, restored, reissued, or reinstated,  
13 deprive the board of its authority to institute or continue a disciplinary  
14 proceeding against the licensee upon any ground provided by law or to  
15 enter an order suspending or revoking the license or otherwise taking  
16 disciplinary action against the licensee on any such ground."

13 **STATUTORY PROVISIONS**

14 7. Section 4301 of the Code provides, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty  
16 of unprofessional conduct or whose license has been procured by fraud or  
17 misrepresentation or issued by mistake. Unprofessional conduct shall  
18 include, but is not limited to, any of the following:"

19 "...  
20 "(f) The commission of any act involving moral turpitude, dishonesty,  
21 fraud, deceit, or corruption, whether the act is committed in the course of  
22 relations as a licensee or otherwise, and whether the act is a felony or  
23 misdemeanor or not."

24 "...  
25 "(h) The administering to oneself, of any controlled substance, or the use  
26 of any dangerous drug or of alcoholic beverages to the extent or in a  
27 manner as to be dangerous or injurious to oneself, to a person holding a  
28 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."

29 "...  
30 "(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."

31 "...  
32 "(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."

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8. Section 4059 of the Code provides:

"A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

9. Section 4060 of the Code provides in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052..."

10. Health and Safety Code Section 11170 provides:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

11. Health and Safety Code Section 11173(a) provides:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

12. Health and Safety Code Section 11350, in pertinent part, provides it unlawful to possess without a prescription any controlled substance classified in Schedule III, IV, or V, which is not a narcotic drug.

13. Health and Safety Code Section 11377(a), in pertinent part, provides it unlawful to possess without a prescription any controlled substance classified in Schedule III, IV, or V, which is not a narcotic drug.

14. Health and Safety Code Section 11550(a), in pertinent part, provides it unlawful to use, or be under the influence of any controlled substance or a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of an authorized licensee.

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15. Health and Safety Code Section 11154(a), provides in pertinent part:

"Except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division."

**COST RECOVERY**

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

**CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

17. Section 4021 of the Code provides:

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

18. Section 4022 of the Code provides:

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

19. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are brand names for compounds consisting of the narcotic Schedule III drug, Acetaminophen (aka APAP) and Hydrocodone. This narcotic is generally prescribed to treat moderate to severe pain. It is designated as a Schedule III controlled substance per Health and Safety Code section 11056(e)(4) and designated as a dangerous per Business and Professions Code section 4022.

20. Zolpidem Tartrate is also known by its brand name Ambien CR. It is a sedative, also called a hypnotic, and is generally prescribed to treat insomnia. Zolpidem is a designated as

1 Schedule IV controlled substance per California Health & Safety Code Section 11057(d)(32) and  
2 designated as a dangerous per Business and Professions Code section 4022.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Committing an Act Involving Moral Turpitude and Dishonesty)**

5 21. Respondent's Pharmacist License is subject to discipline under Business and  
6 Professions Code Section 4301(f) because the Respondent committed an act involving moral  
7 turpitude, dishonesty, fraud, deceit, or corruption. The facts and circumstances of the act are as  
8 follows:

9 22. On or about November 29, 2009, the Respondent was employed as a pharmacist for  
10 the Wal-Mart Store #10-1588 in Victorville, CA. While working in the pharmacy, the  
11 Respondent was observed selecting, diverting, and self-administering controlled substances and  
12 dangerous drugs. A pharmacy clerk observed the Respondent take a pill from the pharmacy shelf  
13 where Vicodin and Norco bottles are stored and the Respondent proceeded to place the item into  
14 his pocket. Later that same day, the Respondent was observed taking an additional pill from a  
15 bottle and ingesting the pill while still behind the counter of the pharmacy. A review of  
16 surveillance video by loss prevention members revealed that on multiple occasions during the  
17 day, the Respondent surreptitiously removed pills from pharmacy bottles and placed the pills into  
18 his pocket. In one incident, the Respondent placed one of the pills into his mouth followed by  
19 drinking water from a cup before returning to work in the pharmacy.

20 23. At the end of the work shift, the Respondent was confronted about the incidents by  
21 loss prevention members and Wal-Mart store management. According to their reports, the  
22 Respondent appeared impaired, altered, nonresponsive, and intoxicated. The Respondent  
23 declined to complete a drug test and left the store.

24 24. On or about November 29, 2009, another pharmacist employed by Wal-Mart  
25 conducted an inventory of the pills suspected to be missing and reported to the San Bernardino  
26 Sheriff Department that the Respondent took the following pills: Hydrocodene Bitartrate and  
27 Acetaminophen (generic for Norco) and Ambien CR.

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**SECOND CAUSE FOR DISCIPLINE**

**(Self-Administering a Controlled Substance)**

25. Respondent's Pharmacist License is subject to discipline under Business and Professions Code Section 4301(h) and Health and Safety Code section 11170 because the Respondent administered to himself a controlled substance, or used a dangerous drug to the extent or in a manner as to be dangerous or injurious to oneself, 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. Complainant refers to, and by this reference incorporates the allegations set forth in paragraphs 22, 23, and 24 above, as though set forth fully.

**THIRD CAUSE FOR DISCIPLINE**

**(Possession of a Controlled Substance)**

26. Respondent's Pharmacist License is subject to discipline under Business and Professions Code Section 4060 and Health and Safety Code sections 11350(a) and 11377(a) because the Respondent possessed, one or more controlled substances without a valid prescription. Complainant refers to, and by this reference incorporates the allegations set forth in paragraphs 22, 23, and 24 above, as though set forth fully.

**FOURTH CAUSE FOR DISCIPLINE**

**(Violating a State Statute Regulating Controlled Substances)**

27. Respondent's Pharmacist License is subject to discipline under Business and Professions Code Sections 4301(j) and 4301(o) and Health and Safety Code section 11173(a) because the Respondent committed an act that violates a statute of this state, or of the United States regulating controlled substances and dangerous drugs by obtaining controlled substances by fraud, deceit, misrepresentation, subterfuge, or by the concealment of a material fact. Complainant refers to, and by this reference incorporates the allegations set forth in paragraphs 22, 23, and 24 above, as though set forth fully.

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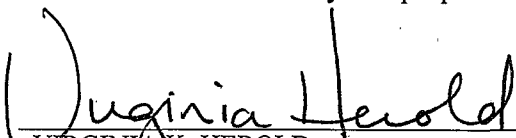
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PRAYER

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 Original Pharmacist License Number RPH 26207, issued to Respondent John Charles Garvey;
2. Ordering Respondent John Charles Garvey 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: 12/5/11

  
\_\_\_\_\_  
VIRGINIA K. HEROLD  
Executive Officer  
California State Board of Pharmacy  
State of California  
*Complainant*

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