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

10 In the Matter of the Accusation Against:

Case No. 4121

11 **DONALD THOMAS LOWDER**
12 **2475 Van Patter Drive**
13 **Santa Rosa, CA 95403**

A C C U S A T I O N

14 **Pharmacist License No. RPH 28713**

15 Respondent.

16
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 October 24, 1973, the Board of Pharmacy issued Pharmacist License No.
22 RPH 28713 to Donald Thomas Lowder (Respondent). The License was in full force and effect at
23 all times relevant to the charges herein and will expire on March 31, 2012, unless renewed.

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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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
15 not be limited to, any of the following:

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 (g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

21 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
22 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
23 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
24 to the extent that the use impairs the ability of the person to conduct with safety to the public the
25 practice authorized by the license.

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

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

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
10 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
11 to have in his or her possession a drug secured by a forged prescription.

12 11. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,
13 dispense or compound any drug while under the influence of a dangerous drug or alcohol.

14 12. Health and Safety Code section 11150 provides, in pertinent part, that no person other
15 than an authorized prescriber shall write or issue a prescription.

16 13. Health and Safety Code section 11157 provides that no person shall issue a
17 prescription that is false or fictitious in any respect.

18 14. Health and Safety Code section 11170 provides that no person shall prescribe,
19 administer, or furnish a controlled substance for himself or herself.

20 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
21 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
22 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
23 or subterfuge; or (2) by the concealment of a material fact.

24 16. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
25 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
26 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
27 prescription, or to possess a controlled substance obtained by such a prescription.

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1 17. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 18. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
5 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
6 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
7 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

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

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 20. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

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

16 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
17 except veterinary drugs that are labeled as such, and includes the following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
19 prescription,’ ‘Rx only,’ or words of similar import.

20 ...

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

23 22. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
24 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
26 drug as designated by Business and Professions Code section 4022. The varying compounds are
27 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

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FACTUAL BACKGROUND

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2 23. From an unknown start date until on or about December 2, 2010, Respondent worked
3 as a pharmacist for a Kaiser Foundation Hospital Pharmacy (#521; PHY 46284) in Rohnert Park,
4 CA, where as a pharmacist Respondent had access to controlled substances and dangerous drugs.

5 24. During this employment, Respondent took advantage of this access to steal/divert
6 controlled substances and dangerous drugs, including **Norco** and/or other **Hydrocodone with**
7 **APAP** controlled drug products, for his own use. The exact number of instances of diversion by
8 Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen by
9 Respondent, are not known, but in the course of investigations conducted by Kaiser and by Board
10 Inspector(s), the following were among the observations, admissions, and revelations reported:

11 a. In or about November 2010, Kaiser auditors/investigators noted indicators of
12 possible drug diversion at Kaiser # 521 involving **Hydrocodone with APAP 10/325mg** (generic
13 **Norco**). A subsequent inventory of the stock of **Hydrocodone with APAP 10/325mg** revealed a
14 series of prescriptions allegedly filled by Respondent between August and October 2010 where:
15 (i) the prescriptions were logged out of the perpetual inventory by Respondent but never sold; (ii)
16 the drugs were never returned to stock; and (iii) the prescription numbers used for the alleged fills
17 either belonged to another patient and drug or belonged to another patient for a different quantity
18 of the same drug. Fictitious records had been entered into the perpetual inventory log so that the
19 quantity of the drug on hand always matched the balance in the log. The pharmacy internal audit
20 department determined that 8,160 tablets of **Hydrocodone with APAP 10/325mg** were missing
21 for the audit period from July 4, 2009 through December 2, 2010.

22 b. On or about December 2, 2010, Respondent was interviewed by investigators
23 from Kaiser. Respondent initially denied any wrongdoing, but then submitted a handwritten letter
24 of resignation and under further questioning admitted to diverting full and partial bottles of drugs
25 containing **Hydrocodone with APAP** from the pharmacy. Respondent was non-specific as to the
26 dates or amounts diverted, but he did acknowledge that he developed an addiction to the drug(s),
27 and that he was taking 25 to 30 tablets per day. Respondent admitted his most recent diversion
28 was of a 100-tablet bottle of **Hydrocodone with APAP 10/325mg** on November 30, 2010.

1 c. The perpetual inventory log records for **Hydrocodone with APAP 10/325mg**
2 from July 30, 2010 through November 30, 2010 showed multiple entries made by Respondent
3 that were identified to be fictitious (i.e., the identified prescriptions were fictitious).

4 d. Surveillance video taken by Kaiser of the pharmacy area showed, on or about
5 October 25, 2010, Respondent appearing to place one or more 100-count bottles of **Hydrocodone**
6 **with APAP 10/325mg** into his pocket. On that same date, Respondent made an entry relating to
7 a fictitious prescription on the perpetual inventory log for **Hydrocodone with APAP 10/325mg**.

8 e. On or about April 15, 2011, Respondent gave an oral and written statement to
9 Board Inspector(s) in which he admitted an addiction to **Hydrocodone**-containing medications,
10 that began sometime after he was prescribed **Vicodin** for a medical condition in 2004. At some
11 point, he realized that he was physically addicted to **Hydrocodone with APAP**. He was not sure
12 when he began stealing **Hydrocodone with APAP 10/325mg** from the pharmacy, but by the end
13 of his employment with Kaiser he had progressed to taking approximately 25-30 tablets per day.

14
15 FIRST CAUSE FOR DISCIPLINE

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

17 25. Respondent is subject to discipline under section 4301(f) of the Code in that
18 Respondent, as described in paragraphs 23 and 24 above, committed numerous acts involving
19 moral turpitude, dishonesty, fraud, deceit, or corruption.

20
21 SECOND CAUSE FOR DISCIPLINE

22 (Creation/Signature of False Documents)

23 26. Respondent is subject to discipline under section 4301(g) of the Code in that
24 Respondent, as described in paragraphs 23 and 24 above, created and/or signed documents that
25 falsely represented the existence or nonexistence of a state of facts.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance and/or Alcohol)

3 27. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
4 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
5 described in paragraphs 23 and 24 above, administered a controlled substance to himself.

6
7 FOURTH CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance)

9 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
11 in paragraphs 23 and 24 above, furnished to himself or another without a valid prescription,
12 and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13
14 FIFTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance)

16 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
18 in paragraphs 23 and 24 above, possessed, conspired to possess, and/or assisted in or abetted
19 possession of, a controlled substance, without a prescription.

20
21 SIXTH CAUSE FOR DISCIPLINE

22 (Working While Under the Influence)

23 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24 and/or section 4327 of the Code, in that Respondent, as described in paragraphs 23 and 24 above,
25 was under the influence of a controlled substance while selling or dispensing drugs.

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SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 23 and 24 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

EIGHTH CAUSE FOR DISCIPLINE

(Making, Uttering and/or Using False or Forged Prescriptions)

32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that Respondent, as described in paragraphs 23 and 24 above, falsely made, altered, forged, uttered, published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or altered prescription, or conspired and/or assisted in or abetted any of these acts.

NINTH CAUSE FOR DISCIPLINE

(Issuance and/or Use of Invalid Prescription(s))

33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in paragraphs 23 and 24 above, issued prescriptions without authority to do so, obtained or possessed an invalid prescription, obtained or possessed a controlled substance by means of such invalid prescription, or conspired and/or assisted in or abetted any of these acts.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

34. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 23 to 33 above, engaged in unprofessional conduct.

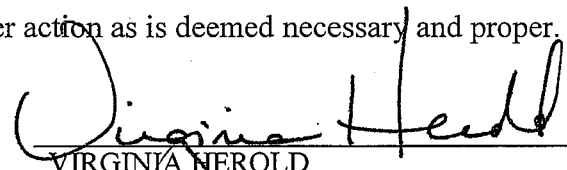
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PRAYER

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 Pharmacist License No. RPH 28713, issued to Donald Thomas Lowder (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: 5/26/12



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

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