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

12 In the Matter of the Accusation Against:

Case No. 5542

13 **WADE LESLIE FULLMER**
14 **2041 N. Johnson**
Turlock, CA 95380

A C C U S A T I O N

15 **Pharmacist License No. RPH 28731**

16 Respondent.

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18
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

23 2. On or about April 28, 1974, the Board issued Pharmacist License Number RPH
24 28731 to Wade Leslie Fullmer (Respondent). The Pharmacist License will expire on December
25 31, 2015, unless renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 4. Code section 4011 provides, in pertinent part, that the Board shall administer and
6 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
7 Substances Act [Health & Safety Code, § 11000 et seq.].

8 5. Code section 4300 states, in pertinent part, that every license issued may be
9 suspended or revoked.

10 6. Code section 4300.1 states:

11 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
12 operation of law or by order or decision of the board or a court of law, the placement of a license
13 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
14 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
15 proceeding against, the licensee or to render a decision suspending or revoking the license."

16 **STATUTORY PROVISIONS**

17 **Business and Professions Code**

18 7. Code section 4301 states, in pertinent part:

19 The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

21 ...

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

25 ...

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

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1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.”

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

6 ...

7 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
8 violation of or conspiring to violate any provision or term of this chapter or of the applicable
9 federal and state laws and regulations governing pharmacy, including regulations established by
10 the board or by any other state or federal regulatory agency.”

11 8. Code section 4021 states:

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

14 9. Code section 4022 states, in pertinent part:

15 “‘Dangerous drug’ means any drug unsafe for self-use in humans or animals, and includes
16 the following:

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

19 ...

20 “(c) Any drug that by federal or state law can be lawfully dispensed only on
21 prescription or furnished pursuant to section 4006.

22 10. Code section 4059 states, in pertinent part, that no person shall furnish any dangerous
23 drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
24 naturopathic doctor.

25 11. Code section 4060 states, in pertinent part, that no person shall possess any controlled
26 substance, except that furnished upon a valid prescription/drug order.

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1 **Health and Safety Code**

2 12. Health and Safety Code section 11170 states that "no person shall prescribe,
3 administer, or furnish a controlled substance for himself."

4 13. Health and Safety Code section 11173 provides, in pertinent part, that no person shall
5 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
6 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
7 or subterfuge; or (2) by the concealment of a material fact.

8 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
9 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
10 subdivision (b) or (c), or any controlled substance which is a narcotic drug in Schedules III-V,
11 absent a valid prescription.

12 **COST RECOVERY**

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

17 **DRUGS**

18 16. Loritab Elixir (also known as hydrocodone/APAP elixir or syrup), is a schedule III
19 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
20 dangerous drug pursuant to Business and Professions Code section 4022. It is an opiate.

21 17. Tramadol (also known as ConZip, Rybix ODT, Ryzolt, Ultram), is a dangerous drug
22 pursuant to Business and Professions Code section 4022. It is a narcotic-like pain reliever.

23 18. Zolpidem (also known as the brand name Ambien), is a schedule IV controlled
24 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
25 drug pursuant to Business and Professions Code section 4022. Zolpidem is a sedative, also called
26 a hypnotic.

1 19. Alprazolam (also known as the brand name Xanax), is a Schedule IV controlled
2 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
3 drug pursuant to Business and Professions Code section 4022. It is a benzodiazepine.

4 20. Oxycodone SOLN is a Schedule II controlled substance pursuant to Health and Safety
5 Code section 11055, subdivision (b)(1), and a dangerous drug pursuant to Business and
6 Professions Code section 4022. It is an opiate.

7 **BACKGROUND**

8 21. On or about May 29, 2015, the Board received information from J.A., RPH and
9 Regional Pharmacy Supervisor for Raley's, advising the Board that Respondent had been
10 suspended pending termination for theft of controlled substances. In February 2015, R.G., RPH
11 and PIC of the Manteca Raley's pharmacy began noticing that counts were off on the
12 hydrocodone/APAP elixir, a controlled substance and dangerous drug. The pattern of
13 discrepancies continued to occur, and R.G. reported it to his assistant store team leader, and to his
14 regional manager. On or about April 29, 2015, an investigation was initiated to determine the
15 reason for the discrepancies of the controlled substances and/or dangerous drugs.

16 22. On or about May 7, 2015, V.H., Raley's Asset Protection and Lead Coordinator, and
17 J.A., coordinated the installation of covert cameras at the Raley's pharmacy in Manteca,
18 California. The covert cameras were primarily focused on activities at the Schedule II controlled
19 substances cabinet. On or about May 18, 2015, V.H. reviewed the video footage from May 12
20 and 13, 2015. The video footage revealed that on May 12, 2015, at 13:00 hours, Respondent
21 retrieved the Loritab Elixir bottle from the top shelf of the controlled substances cabinet, removed
22 the cap, and drank directly from the bottle. Respondent then placed the cap back on the bottle and
23 returned it to the shelf. Later that same day, at 17:34 hours, Respondent again retrieved the
24 Loritab Elixir bottle from the top shelf of the controlled substances cabinet, removed the lid, and
25 drank directly from the bottle. He then replaced the cap and put the bottle back on the shelf of the
26 cabinet. On May 13, 2015, at 10:10 hours, Respondent retrieved the Loritab Elixir bottle from the
27 top shelf of the controlled substances cabinet, removed the lid, and proceeded to drink directly
28 from the bottle while in a semi-crouched position. Respondent then retrieved a Dixie cup from

1 behind him, a location out of view of the camera, and proceeded to pour something liquid into the
2 elixir bottle. He then put the cap back on and returned the bottle to the controlled substances
3 cabinet.

4 23. On May 22, 2015, an interview was conducted with Respondent at the Turlock
5 Raley's store. V.H., T.S., G.W., and J.A., all attended the interview with Respondent.
6 Respondent admitted to stealing controlled substances and/or dangerous drugs from all three
7 pharmacies he worked at, and self administering those medications. Respondent admitted that he
8 had been taking the Loritab elixir to help him deal with pain resulting from a 2012 surgery, and a
9 resulting addiction to pain medications. Respondent admitted to self medicating at work because
10 his surgeon and primary care physician began to limit his prescriptions in an effort to deal with his
11 addiction.

12 24. Respondent also admitted to self administering the controlled substances and/or
13 dangerous drugs he unlawfully stole by sipping approximately 5 ml directly from the Loritab
14 Elixir bottle while on duty as a pharmacist, every shift he worked. The routine was the same at
15 all three locations he worked at since December 2014, with an approximate total of 720 ml.
16 Loritab Elixir. In addition, on one or two occasions, he poured water into the open Loritab Elixir
17 bottle after receiving a text message from R.G. asking about missing Loritab. Respondent also
18 admitted to taking Tramadol, Zolpidem and Alprazolam from the Manteca Raley's pharmacy,
19 Zolpidem, Alprazolam, and Oxycodone SOLN from the Turlock Raley's pharmacy, and Zolpidem
20 from the Modesto Raley's pharmacy. Respondent admitted that he does not have valid
21 prescriptions for the medications he stole from Raley's pharmacies.

22 FIRST CAUSE FOR DISCIPLINE

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

24 25. Respondent is subject to discipline under Code section 4301, subdivision (f), for
25 unprofessional conduct, in that Respondent committed numerous acts involving moral turpitude,
26 dishonesty, fraud, deceit or corruption. The circumstances are as follows:

27 a. Between approximately December 2014 and May 13, 2015, on multiple and
28 regular instances, Respondent stole Loritab Elixir, Tramadol, Zolpidem and Alprazolam, and

1 Oxycodone SOLN, controlled substances and dangerous drugs, from Raley's Pharmacies while
2 working as a part time pharmacist in Manteca, Modesto, and Turlock, California. The
3 medications Respondent stole and illegally possessed were fraudulently and illegally used for self-
4 medication, without a valid prescription for those medications. The facts and circumstances are
5 more fully set forth above in paragraphs 21 to 24.

6 b. Between approximately December 2014 and May 13, 2015, on multiple and
7 regular instances, Respondent contaminated Loritab Elixir (also known as hydrocodone/APAP
8 elixir or syrup) by drinking directly from the stock bottles and returning them to the stock every
9 shift he worked at all three pharmacy locations. On at least two occasions, Respondent
10 contaminated and altered the potency and effectiveness of Loritab Elixir bottles by pouring water
11 into the bottles to replace what he had drank in an attempt to conceal his actions. The facts and
12 circumstances are more fully set forth above in paragraphs 21 to 24.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession of Controlled Substances and/or Dangerous Drugs)**

15 26. Respondent is subject to discipline under Code sections 4301, subdivision (j), section
16 4060, and Health and Safety Code section 11350, in that on multiple and regular instances,
17 Respondent possessed controlled substances and dangerous drugs (Loritab Elixir, Tramadol,
18 Zolpidem and Alprazolam, and Oxycodone SOLN) without a valid prescription, as more fully set
19 forth above in paragraphs 21 to 25 and their subparts.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unlawful Self-Administration of a Controlled Substance)**

22 27. Respondent is subject to discipline under Code section 4301, subdivision (h), and
23 Health and Safety Code section 11170, in that on multiple and regular instances, Respondent
24 administered to himself controlled substances and/or dangerous drugs (Loritab Elixir, Tramadol,
25 Zolpidem and Alprazolam, and Oxycodone SOLN) without a valid prescription, as more fully set
26 forth above in paragraphs 21 to 25 and their subparts.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Furnishing of Dangerous Drug)**

3 28. Respondent is subject to discipline under Code sections 4301, subdivision (j), section
4 4059, and Health and Safety Code section 11170, in that on multiple and regular instances,
5 Respondent furnished to himself controlled substances and dangerous drugs (Loritab Elixir,
6 Tramadol, Zolpidem and Alprazolam, and Oxycodone SOLN) without a valid prescription, as
7 more fully set forth above in paragraphs 21 to 25 and their subparts.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Obtaining Controlled Substance by Fraud, Deceit, or Subterfuge)**

10 29. Respondent is subject to discipline under Code sections 4301, subdivision (j)
11 and Health and Safety Code section 11173, subdivision (a), in that on multiple and regular
12 instances, Respondent obtained controlled substances (Loritab Elixir, Tramadol, Zolpidem and
13 Alprazolam, and Oxycodone SOLN) by fraud, deceit, subterfuge, or concealment of a material
14 fact, as more fully set forth above in paragraphs 21 to 25 and their subparts.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Violation of Statutes Governing Controlled Substances)**

17 30. Respondent is subject to discipline under Code section 4301, subdivision (j), in that
18 Respondent violated statutes regulating controlled substances and dangerous drugs, including
19 Code section 4059, as set forth above in paragraph 28, Code section 4060, as set forth above in
20 paragraph 26, and Health and Safety Code section 11350, as set forth above in paragraph 26,
21 Health and Safety Code section 11170, as set forth above in paragraphs 27 and 28, and Health and
22 Safety Code section 11173, as set forth above in paragraph 29.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Laws Governing Pharmacy)**

25 31. Respondent is subject to discipline under Code section 4301, subdivision (o), in that
26 Respondent violated the laws governing pharmacy, as more fully set forth above in paragraphs 21
27 through 30, and their subparts.

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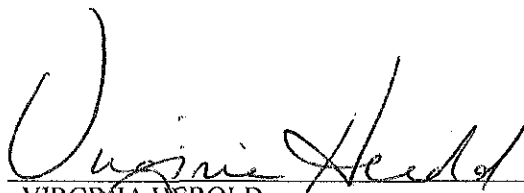
PRAYER

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 Number RPH 28731, issued to Wade Leslie Fullmer;
2. Ordering Wade Leslie Fullmer 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:

9/3/15



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

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