1	KAMALA D. HARRIS
2	Attorney General of California LINDA K. SCHNEIDER Sonior Assistant Attorney General
3	Senior Assistant Attorney General JOSHUA A. ROOM Supervising Deputy Attorney General
4	State Bar No. 214663 455 Golden Gate Avenue, Suite 11000
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299
6	Facsimile: (415) 703-5480 Attorneys for Complainant
7	BEFORE THE
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
9	STATE OF CALIFORNIA
10	In the Matter of the Accusation Against: Case No. 5825
11	DARYL SCOTT WOLFE OAH No. 2016050553
12 13	1529 Golf Course Drive Windsor, CA 95492A C C U S A T I O N
13	Pharmacist License No. RPH 46273
14	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 August 10, 1993, the Board issued Pharmacist License No. RPH 46273
22	to Daryl Scott Wolfe (Respondent). The License was in full force and effect at all times relevant
23	to the charges brought herein and will expire on October 31, 2016, unless renewed.
24	<u>JURISDICTION</u> 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
[.] 25	Consumer Affairs, under the authority of the following laws. All section references are to the
26	Business and Professions Code (Code) unless otherwise indicated.
27	
28	
	(DARYL SCOTT WOLFE) ACCUSATION

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

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

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the 7 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to 8 commence or proceed with any investigation of, or action or disciplinary proceeding against, the 9 licensee or to render a decision suspending or revoking the license. 10

11

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action 12 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but 13 not be limited to, any of the following: 14

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 15 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 16 whether the act is a felony or misdemeanor or not. 17

(h) The administering to oneself, of any controlled substance, or the use of any dangerous 18 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to 19 oneself, to a person holding a license under this chapter, or to any other person or to the public, or 20to the extent that the use impairs the ability of the person to conduct with safety to the public the 21 22 practice authorized by the license.

23

(i) 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. 24

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the 25 26 violation of or conspiring to violate any provision or term of this chapter or of the applicable 27 federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. 28

1	8. California Code of Regulations, title 16, section 1770, states:	
2	"For the purpose of denial, suspension, or revocation of a personal or facility license	
3	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a	
4	crime or act shall be considered substantially related to the qualifications, functions or duties of a	
5	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a	
6	licensee or registrant to perform the functions authorized by her license or registration in a manner	
7	consistent with the public health, safety, or welfare."	
8	9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous	
9	drug or dangerous device except upon the prescription of an authorized prescriber.	
10	10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any	
11	controlled substance, except that furnished upon a valid prescription/drug order.	
12	11. Health and Safety Code section 11170 provides that no person shall prescribe,	
13	administer, or furnish a controlled substance for himself or herself.	
14	12. Health and Safety Code section 11173, subdivision (a), provides that no person shall	
15	obtain or attempt to obtain controlled substances, or procure or attempt to procure the	
16	administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,	
17	or subterfuge; or (2) by the concealment of a material fact.	
18	13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess	
19	any controlled substance listed in Schedule II (Health and Safety Code section 11055),	
20	subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.	
21	COST RECOVERY	
22	14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the	
23	administrative law judge to direct a licentiate found to have committed a violation of the licensing	
24	act to pay a sum not to exceed its reasonable costs of investigation and enforcement.	
25	FACTUAL BACKGROUND	
26	15. On or about July 9, 2015, February 11, 2016, and February 20, 2016, Respondent was	
27	interdicted and arrested by police agencies on suspicion of driving while under the influence of	
28	drugs in violation of Vehicle Code section 23152, subdivision (e).	1
	3	r
	(DARYL SCOTT WOLFE) ACCUSATION	

16. The blood sample taken from Respondent incident to the February 11, 2016 arrest 1 2 showed a positive result for the presence of **benzodiazepines**, a Schedule IV controlled substance and a central nervous system depressant.

3

4

5

6

7

8

9

10

11

12

On or about April 28, 2016, Respondent's employer (CVS Pharmacy) made an 17. impaired pharmacist report to the Board of Pharmacy, noting that on or about March 23, 2016, Respondent reported to work as a pharmacist at a CVS Pharmacy location exhibiting symptoms consistent with drug impairment including: being unsteady on his feet, swaying back and forth, being unable to access the dispensing system on the computer for several minutes, slurring his speech, seeming confused, acting strangely, having glassy eyes, and being unable to answer simple questions. After his employer determined that he was unfit to work and called him a cab, Respondent dropped the same item multiple times on his way out to the parking lot, and stumbled and nearly fell when he was trying to retrieve the item.

18. On or about May 2, 2016, during an interview with a Board of Pharmacy Inspector, 13 Respondent refused to answer any questions about his conduct or any drug consumption during or 14 prior to his arrests on July 9, 2015, February 11, 2016, and February 20, 2016. He did say that he 15 did not have any prescriptions for controlled substances before or subsequent to these arrests, and 16 said that he was not taking any controlled substances. He said that he last received a prescription 17 for controlled substances in September or October 2015, for **clonezapam**, but gave the drugs to 18 his wife for her use. Respondent admitted receiving monthly injections of Vivitrol, a medication 19 indicated for treatment of alcohol dependence or for prevention of relapse to opioid dependence. 20 21 But he insisted he had not consumed alcohol for over ten (10) years, contradicting an admission he made to the same Board of Pharmacy Inspector in August 2014 that he had begun drinking 22 again in April 2014 due to family stress, including his own and family members' medical issues. 23 /// 24 111 25 $\parallel \mid$ 26 /// 27

 $\parallel \mid$ 28

FIRST CAUSE FOR DISCIPLINE (Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)
(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)
19. Respondent is subject to discipline under section 4301(f) of the Code, in that
Respondent, as described in paragraphs 15-18 above, engaged in one or more acts involving
moral turpitude, dishonesty, fraud, or deceit.
SECOND CAUSE FOR DISCIPLINE
(Self-Administration of Controlled Substance)
20. Respondent is subject to discipline under section 4301(h), (j) and/or (o) of the Code,
and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 15-
18 above above, administered to himself, and/or conspired to self-administer, and/or assisted or
abetted self-administration of, a controlled substance.
THIRD CAUSE FOR DISCIPLINE
(Furnishing of Controlled Substance)
21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
in paragraphs 15-18 above, furnished to himself or another without a valid prescription, and/or
conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.
FOURTH CAUSE FOR DISCIPLINE
(Possession of Controlled Substance(s))
22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
in paragraphs 15-18 above, possessed, conspired to possess, and/or assisted in or abetted
possession of, a controlled substance, without a prescription.
///
///
5

1	FIFTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct)
3	23. Respondent is subject to discipline under section 4301 of the Code in that
4	Respondent, as described in paragraphs 15-22 above, engaged in unprofessional conduct.
5	
6	<u>PRAYER</u>
7	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8	and that following the hearing, the Board of Pharmacy issue a decision:
9	1. Revoking or suspending Pharmacist License Number RPH 46273, issued to Daryl
10	Scott Wolfe (Respondent);
11	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
12	enforcement of this case, pursuant to Business and Professions Code section 125.3;
13	3. Taking such other and further action as is deemed necessary and proper.
14	PATED: 7/15/16 Ungine Andel
15	DATED:
16	Executive Officer
17	Board of Pharmacy Department of Consumer Affairs State of California
18	Complainant
19	SF2016201257
20	41561436.doc
21	
22	
23	
24	
25	
26	
27	
28	
	6
l	(DARYL SCOTT WOLFE) ACCUSATION