

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against: Case No. 4879

13 **DONNY JAMES WEINBERGER**

STATEMENT OF ISSUES

14 Respondent.

15
16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity as the
19 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

20 2. On or about May 23, 2013, the Board received an application for a Pharmacist license
21 from Donny James Weinberg ("Respondent"). On or about May 10, 2013, Respondent certified
22 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
23 application. The Board denied the application on June 19, 2013. On or about July 2, 2013 the
24 Board issued an updated letter denying the application based on a pending investigation.

25 3. On or about September 29, 2010 the Board issued Intern Pharmacist Registration No.
26 INT 26871, to Respondent. Respondent's Intern Pharmacist Registration will expire on
27 September 30, 2014, unless renewed.
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STATUTORY PROVISIONS

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4. Section 475 provides in relevant part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

5. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

6. Business and Professions Code ("Code") section 4301 provides, in pertinent part;

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

7. Section 4301 provides in relevant part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct

1 Unprofessional conduct shall include, but is not limited to, any of
2 the following:

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

7 (h) The administering to oneself, of any controlled substance, or
8 the use of any dangerous drug or of alcoholic beverages to the extent
9 or in a manner as to be dangerous or injurious to oneself, to a
10 person holding a license under this chapter, or to any other person
11 or to the public, or to the extent that the use impairs the ability
12 of the person to conduct with safety to the public the practice
13 authorized by the license.

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

17 (p) Actions or conduct that would have warranted denial of a
18 license.

19 9. Section 4022 provides in relevant part:

20 "Dangerous drug" or "dangerous device" means any drug or device
21 unsafe for self-use in humans or animals, and includes the following:

22 (a) Any drug that bears the legend: "Caution: federal law prohibits
23 dispensing without prescription," "Rx only," or words of similar
24 import.

25 (b) Any device that bears the statement: "Caution: federal law
26 restricts this device to sale by or on the order of a," "Rx
27 only," or words of similar import, the blank to be filled in with
28 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.

10. Section 4060 provides in relevant part:

No person shall possess any controlled substance, furnished to a person
upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7,
issued by a certified... a nurse practitioner pursuant to Section 2836.1,
a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to
Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2.

1 **CONTROLLED SUBSTANCES**

2 11. "Phentermine" is designated a Schedule IV substance by Health and Safety Code
3 section 11055(f)(3).

4 **FACTUAL ALLEGATIONS**

5 12. In 2010 Respondent was working as a pharmacist intern at a hospital pharmacy.
6 Drugs dispensed by the pharmacy but not administered to patients are returned to the pharmacy
7 in a drug return bin. Between approximately December 2010 and April 2012 Respondent
8 diverted, took, stole, and self-administered Phentermine without a lawful prescription.
9 Respondent obtained the Phentermine by taking the drug from the hospital's drug return bin.
10 Respondent self-administered the drug and was under the influence of the drug while performing
11 the duties, obligations and responsibilities of a pharmacist intern.

12 **FIRST CAUSE FOR DENIAL**

13 **(Self-Administration of Dangerous Drug)**

14 13. Respondent's application is subject to denial pursuant to Code sections,
15 480 (a)(3)(A) and 4301(h) in that Respondent committed unprofessional conduct by self-
16 administering a dangerous drug without a prescription, an act which if done by a licensee would
17 be grounds for revocation or suspension of a pharmacist license.

18 14. Paragraph 12 is incorporated herein as though set forth at length. Respondent self-
19 administered the dangerous drug phentermine from at least December 2010 to April 2012.
20 Respondent did not possess a lawful prescription for the dangerous drug.

21 **SECOND CAUSE FOR DENIAL**

22 **(Unprofessional Conduct-Dishonest Acts)**

23 15. Respondent's application is subject to denial pursuant to Code sections 480(a)(3) and
24 4301(f) in that Respondent committed acts involving dishonesty and deceit.

25 16. Paragraph 12 is incorporated herein as though set forth at length. Respondent
26 diverted, took, stole or removed the dangerous drug phentermine from the drug return bin at his
27 place of employment and self-administered the drug while performing and discharging the duties,
28 responsibilities and obligations of a registered pharmacist intern with the intent to substantially

1 benefit Respondent. These actions would be cause for revocation or suspension of a pharmacist
2 license.

3 **THIRD CAUSE FOR DENIAL**

4 **(Unprofessional Conduct- Possession of Dangerous Drugs)**

5 17. Respondent's application is subject to denial pursuant to Code sections 480 (a)(3)(A),
6 4060 and 4301(j) in that Respondent possessed a dangerous drug without a lawful prescription.

7 18. Paragraph 12 is incorporated herein as though set forth at length. Respondent
8 possessed the dangerous drug Phentermine without a lawful prescription.

9 **PRAYER**

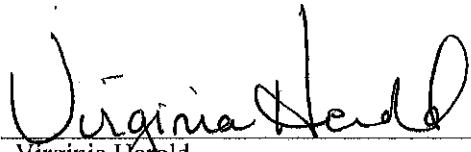
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

- 12 1. Denying the application of Donny James Weinberger for a Pharmacists License;
13 2. Taking such other and further action as deemed necessary and proper.

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DATED:

12/12/13



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

SA2012106789