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

12 In the Matter of the Accusation Against:

Case No. 3261

13 **BRADLEY ALLAN SHUPE**  
2546 Ledgeview Place  
14 Spring Valley, CA 91977

**DEFAULT DECISION AND ORDER**

15 Respondent.

[Gov. Code, §11520]

16  
17 FINDINGS OF FACT

18 1. On or about April 10, 2009, Complainant Virginia Herold, in her official capacity as  
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
20 Accusation No. 3261 against Shupe, Bradley Allan (Respondent) before the Board of Pharmacy.

21 2. On or about September 7, 2006, the Board of Pharmacy (Board) issued Original  
22 Pharmacy Registration No. TCH 71749 to Respondent. The Original Pharmacy Registration will  
23 expire on December 31, 2009, unless renewed.

24 3. On or about May 15, 2009, Elsa Valdez, an employee of the Department of Justice,  
25 served by First Class Mail and Certified Mail a copy of the Accusation No. 3261, and related  
26 documents to Respondent's address of record with the Board, which was and is: 2546 Ledgeview

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1 Place, Spring Valley, CA 91977. A copy of the Accusation is attached as exhibit A, and is  
2 incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c). On or about June 3, 2009, the aforementioned  
5 documents served by Certified Mail were returned by the U.S. Postal Service marked  
6 "Unclaimed."

7 5. Business and Professions Code section 118 states, in pertinent part:

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

15 6. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
17 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
18 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's  
19 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
22 No. 3261.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
25 agency may take action based upon the respondent's express admissions or upon other evidence  
26 and affidavits may be used as evidence without any notice to respondent.

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1 9. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 evidence on file herein, finds that the allegations in Accusation No. 3261 are true.

4 10. The total cost for investigation and enforcement in connection with the Accusation  
5 are \$2,353 as of August 17, 2009.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Bradley Allan Shupe has  
8 subjected his Original Pharmacy Registration No. TCH 71749 to discipline.

9 2. A copy of the Accusation is attached.

10 3. The agency has jurisdiction to adjudicate this case by default.

11 4. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacy  
12 Registration based upon the following violations alleged in the Accusation:

13 a. Violation of Business and Professions Code sections 490 and 4301(l), in that on June  
14 4, 2008, in a case entitled People vs. Bradley Shupe, in the Superior Court of California,  
15 Sounty of San Diego, Central Division, Case No. CD212279, Respondent pled guilty to  
16 violating Health and Safety Code section 11351 (Possession or Sale of a Controlled  
17 Substance – Hydrocodone), a felony.

18 b. Violation of Business and Professions Code section 4301(f), (j) and (l) in that  
19 between late 2007 and March of 2008, Respondent took Hydrocodone pills from his  
20 employer, CVS Pharmacy, without the pharmacy's authorization. Respondent admitted  
21 to officers that he sold the pills for about two to three dollars per pill to transients in the  
22 North Park area of San Diego County. This constitutes unprofessional conduct.

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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3261

13 **BRADLEY ALLAN SHUPE**  
2546 Ledgeview Place  
14 Spring Valley, CA 91977

**ACCUSATION**

15 Technician Registration No. TCH 71749

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

22 2. On or about September 7, 2006, the Board of Pharmacy issued Original  
23 Pharmacy Registration Number TCH 71749 to Bradley Allan Shupe (Respondent). The license  
24 was in full force and effect all times relevant to the charges brought herein and will expire on  
25 December 31, 2009, unless renewed.

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JURISDICTION

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

5           4.     Section 4300 of the Code states:

6           (a) Every license issued may be suspended or revoked.

7           ....

8           5.     Section 4301 of the Code states:

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

13           ....

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

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

20           (i) Except as otherwise authorized by law, knowingly selling, furnishing,  
21 giving away, or administering or offering to sell, furnish, give away, or administer  
22 any controlled substance to an addict.

23           (l) The conviction of a crime substantially related to the qualifications,  
24 functions, and duties of a licensee under this chapter. The record of conviction  
25 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
26 United States Code regulating controlled substances or of a violation of the  
27 statutes of this state regulating controlled substances or dangerous drugs shall be  
28 conclusive evidence of unprofessional conduct. In all other cases, the record of  
conviction shall be conclusive evidence only of the fact that the conviction occurred.  
The board may inquire into the circumstances surrounding the commission of the  
crime, in order to fix the degree of discipline or, in the case of a conviction not  
involving controlled substances or dangerous drugs, to determine if the conviction  
is of an offense substantially related to the qualifications, functions, and duties of a  
licensee under this chapter. A plea or verdict of guilty or a conviction following a  
plea of nolo contendere is deemed to be a conviction within the meaning of this  
provision. The board may take action when the time for appeal has elapsed, or the  
judgment of conviction has been affirmed on appeal or when an order granting  
probation is made suspending the imposition of sentence, irrespective of a  
subsequent order under Section 1203.4 of the Penal Code allowing the person to  
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
the verdict of guilty, or dismissing the accusation, information, or indictment.

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

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

7 7. Section 118, subdivision (b), of the Code provides that the expiration of a  
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
9 period within which the license may be renewed, restored, reissued or reinstated.

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

14 9. Section 490 of the Code states:

15 (a) In addition to any other action that a board is permitted to take  
16 against a licensee, a board may suspend or revoke a license on the ground  
17 that the licensee has been convicted of a crime, if the crime is substantially  
18 related to the qualifications, functions, or duties of the business or profession  
19 for which the license was issued.

20 .....

21 10. California Code of Regulations, title 16, section 1770, states:

22 For the purposes of denial, suspension, or revocation of a personal or  
23 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
24 Business and Professions Code, a crime or act shall be considered substantially  
25 related to the qualifications, functions or duties of a licensee or registrant if to a  
26 substantial degree it evidences present or potential unfitness of a licensee or  
27 registrant to perform the functions authorized by his license or registration in  
28 a manner consistent with the public health, safety, or welfare.

11. California Code of Regulations, title 16, section 1769, states:

.....

When considering the suspension or revocation of a facility or a personal  
license on the ground that the licensee or the registrant has been convicted of a  
crime, the board, in evaluating the rehabilitation of such person and his present  
eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with all terms of parole, probation,  
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) Evidence, if any, of rehabilitation submitted by the licensee.

5 FIRST CAUSE FOR DISCIPLINE

6 (June 4, 2008 Conviction for Possession for Sale of a Controlled Substance -  
7 Hydrocodone - Between Late 2007 and Early 2008)

8 12. Respondent is subject to disciplinary action under sections 490 and 4301(l)  
9 in that on June 4, 2008, in a case entitled People vs. Bradley Allan Shupe, in the Superior Court  
10 of California, County of San Diego, Central Division, Case No. CD212279, Respondent pled  
11 guilty to violating Health and Safety Code section 11351 (Possession for Sale of a Controlled  
12 Substance - Hydrocodone), a felony. The circumstances are as follows:

13 a. In February of 2008, the Regional Pharmaceutical Enforcement Task  
14 Force (RxNET) received a call from Respondent's then-employer, CVS Pharmacy, Loss  
15 Prevention Specialist R.W., requesting a meeting regarding missing drugs at a CVS Pharmacy.  
16 R.W. informed RxNET that, after several inventory shortages of Hydrocodone were found at  
17 CVS Pharmacy, three covert cameras were installed within the pharmacy area. Respondent was  
18 recorded on three occasions, on February 5, 6 and 19, 2008, taking bottles of Hydrocodone and  
19 concealing them on his person.

20 On March 6, 2008, Respondent was interviewed by an RxNET member and  
21 Respondent admitted to taking Hydrocodone and other pills from CVS Pharmacy without the  
22 pharmacy's authorization during the previous six to seven months. Respondent admitted to task  
23 force members that he last took Hydrocodone without authorization from CVS Pharmacy on  
24 March 4, 2008. Respondent was arrested by RxNET task force members.

25 b. As a result of the above conviction, Respondent was committed to the San  
26 Diego County Jail for 180 days, with 7 days credit for time served. Respondent was placed on  
27 three years formal probation to run through July of 2011. Respondent was also ordered to pay a  
28 \$ 1,100 in fees and fines, and \$20,926.83 restitution to the victim(s) at \$50 per month.

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