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

10 In the Matter of the Accusation Against:

Case No. 3879

11 **JOHN PAUL DORE**
12 **121 Ellert Street**
13 **San Francisco, CA 94410**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacist License No. RPH 51348

Respondent.

14 **FINDINGS OF FACT**

15 1. On or about April 5, 2011, Complainant Virginia Herold, in her official capacity as
16 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
17 No. 3879 against John Paul Dore (Respondent) before the Board of Pharmacy. On or about July
18 14, 2011, again acting in her official capacity, Ms. Herold filed First Amended Accusation No.
19 3879 against Respondent. A copy of the First Amended Accusation is attached as exhibit A.

20 2. On or about October 4, 1999, the Board of Pharmacy (Board) issued Pharmacist
21 License No. RPH 51348 to Respondent. The License was in full force and effect at all times
22 relevant to the charges in Accusation No. 3879. The License expired on July 31, 2011, and has
23 not been renewed. Pursuant to Business and Professions Code section 118(b), this lapse in
24 licensure does not deprive the Board of its authority to institute or continue this proceeding.

25 3. On or about April 11, 2011, Respondent was served by Certified and First Class Mail
26 with copies of: Accusation No. 3879; a Statement to Respondent, a Notice of Defense (2 copies);
27 a Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at
28 Respondent's address of record, which was and is: 121 Ellert Street, San Francisco, CA 94410.

1 4. On or about July 20, 2011, Respondent was served by Certified and First Class Mail
2 with copies of: First Amended Accusation No. 3879; a Supplemental Statement to Respondent; a
3 Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at
4 Respondent's address of record, which was and is: 121 Ellert Street, San Francisco, CA 94410.

5 5. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
6 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
7 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

8 6. Service of the Accusation packet and of the First Amended Accusation packet were
9 each effective as a matter of law under Government Code section 11505, subdivision (c) and/or
10 Business and Professions Code section 124.

11 7. Government Code section 11506 states, in pertinent part:

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

17 8. Respondent failed to file a Notice of Defense within 15 days after service on him of
18 the Accusation, and within 15 days after service on him of the First Amended Accusation, and
19 therefore waived his right to a hearing on the merits of First Amended Accusation No. 3879.

20 9. California Government Code section 11520 states, in pertinent part:

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

25 10. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
28 as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in First Amended
Accusation No. 3879, finds that the charges and allegations in First Amended Accusation No.
3879, are separately and severally true and correct by clear and convincing evidence.

1 11. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for investigation
3 and enforcement in this case are \$7,087.00 as of August 10, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent John Paul Dore has subjected his
6 Pharmacist License No. RPH 51348 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
9 based upon the following violations alleged in the First Amended Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. In violation of Business and Professions Code section 4301(f), Respondent did the
12 following acts involving moral turpitude, dishonesty, fraud, deceit, or corruption: (i) On or about
13 November 9, 2008, officers responding to a traffic accident involving Respondent found him in
14 possession of a used hypodermic needle and syringe and a green powder subsequently determined
15 to be **Ecstasy/MDMA** – Respondent failed Field Sobriety Test(s) and gave varying explanations
16 for how the needle and syringe came to be in his possession; and (ii) During his tenure as a part-
17 time relief staff pharmacist between 2006 and September 10, 2010 at Santa Clara Valley Medical
18 Center (HPE 40398) in San Jose, CA, Respondent diverted and stole controlled substances and
19 dangerous drugs, including **OxyContin/oxycodone** - on at least four (4) occasions during this
20 time period, including on August 23, 2010, August 26, 2010, September 4, 2010, and September
21 5, 2010, Respondent removed ten (10) tablets of **oxycodone 5mg** (for a total of at least forty (40)
22 tablets) from the Pyxis CII Safe, and took them home with him.

23 b. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059 ,
24 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
25 himself or another without a valid prescription, and/or conspired, assisted or abetted furnishing
26 of, a controlled substance, without a valid prescription;

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28 ///

1 c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,
2 and/or Health and Safety Code section(s) 11350 and/or 11377, Respondent, as described above,
3 possessed, conspired to possess and/or assisted in or abetted possession of, a controlled substance,
4 without a valid prescription;

5 d. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4140,
6 and/or Health and Safety Code section 11364, Respondent, as described above, possessed,
7 conspired to possess and/or assisted in or abetted possession of, a hypodermic needle or syringe,
8 and/or drug paraphernalia;

9 e. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
10 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to
11 obtain and/or assisted in or abetted obtaining of, a controlled substance by fraud, deceit,
12 subterfuge, or concealment of a material fact;

13 f. In violation of Business and Professions Code section 4301, Respondent, as described
14 above, engaged in unprofessional conduct.

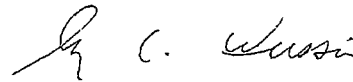
15 ORDER

16 IT IS SO ORDERED that Pharmacist License No. RPH 51348, heretofore issued to
17 Respondent John Paul Dore, is revoked.

18 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
19 written motion requesting that the Decision be vacated and stating the grounds relied on within
20 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
21 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

22 This Decision shall become effective on November 23, 2011.

23 It is so ORDERED October 24, 2011.

24 

25 _____
26 STANLEY C. WEISSER, BOARD PRESIDENT
27 FOR THE BOARD OF PHARMACY
28 DEPARTMENT OF CONSUMER AFFAIRS

20504704.DOC
DOJ Matter ID:SF2010202861
Attachment: Exhibit A: Accusation

Exhibit A

First Amended Accusation No. 3879

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BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3879

11 **JOHN PAUL DORE**
12 **121 Ellert Street**
13 **San Francisco, CA 94410**

FIRST AMENDED ACCUSATION

14 **Pharmacist License No. RPH 51348**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about October 4, 1999, the Board of Pharmacy issued Pharmacist License No.
21 RPH 51348 to John Paul Dore (Respondent). The License was in full force and effect at all times
22 relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

23
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.
28

1 8. California Code of Regulations, title 16, section 1770, provides in pertinent part that a
2 crime or act: shall be considered substantially related to the qualifications, functions or duties of a
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
4 licensee or registrant to perform the functions authorized by her license or registration in a
5 manner consistent with the public health, safety, or welfare.

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

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

10 11. Section 4140 of the Code makes it unlawful to possess or have under one's control a
11 hypodermic needle or syringe except when acquired as permitted by the Pharmacy Law.

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

14 13. 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 administration
16 of or a prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or
17 subterfuge; or (2) by the concealment of a material fact.

18 14. 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 15. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
22 a controlled substance in Schedule I (except subdivision(s) (d)(13), (14), (15), and (20)).

23 16. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
24 an opium pipe or other drug paraphernalia.

25 COST RECOVERY

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

1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 18. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 19. Section 4022 of the Code states, in pertinent part:

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

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

10
11 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
12 prescription or furnished pursuant to Section 4006.”

13 20. **Ecstasy** is a street name for **Methylenedioxyamphetamine (MDMA)**, a
14 Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(6) and
15 a dangerous drug as designated by Business and Professions Code section 4022.

16 21. **OxyContin** is a brand name for **oxycodone hydrochloride**, a Schedule II controlled
17 substance as designated by Health and Safety Code section 11055(b) and a dangerous drug as
18 designated by Business and Professions Code section 4022, used for pain relief.

19
20 FACTUAL BACKGROUND

21 22. On or about November 9, 2008, Respondent was involved in a traffic accident in or
22 near Redwood City, CA. When California Highway Patrol officer(s) responded, in an attempt to
23 produce his driver’s license Respondent reached into a pocket and produced a used hypodermic
24 needle and syringe. Respondent asserted first that he used this to clean surfaces at work, then that
25 it had been inadvertently put into his pocket. During a search of Respondent’s vehicle, a zip-loc
26 baggie was found that contained a green powder subsequently determined to be **Ecstasy/MDMA**.
27 After transport to the hospital, Respondent reportedly failed one or more Field Sobriety Test(s).

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1 23. On or about February 10, 2009, on the basis of the incidents described in paragraph
2 22, Respondent was charged in *People v. John Paul Dore*, Case No. SM361817 in San Mateo
3 County Superior Court, with violating (1) Health and Safety Code section 11377(a) (Possession
4 of Controlled Substance – **MDMA**), a misdemeanor; (2) Business and Professions Code section
5 4140 (Possession of Hypodermic Needle or Syringe), a misdemeanor; and (3) Health and Safety
6 Code section 11364 (Possession of Drug Paraphernalia), a misdemeanor.

7 24. On or about July 1, 2009, Respondent entered a plea of *nolo contendere* to Count (1)
8 (violation of Health and Safety Code section 11377(a)). The remaining counts were dismissed as
9 part of the plea agreement. Respondent was granted a deferred entry of judgment (DEJ) on Count
10 (1), and was diverted from prosecution for eighteen (18) months, criminal proceedings suspended
11 for Respondent to commence and continue a rehabilitation program as directed by Probation, and
12 to comply with other terms and conditions, including fines and fees, and drug testing. Then, on or
13 about December 28, 2010, a petition to revoke probation and/or to terminate diversion was filed
14 against Respondent by or on behalf of the Probation Department, Respondent's grant of diversion
15 was terminated and revoked, and a bench warrant against Respondent was issued. That warrant is
16 still in effect and/or has been re-issued, and is still outstanding.

17 25. From an unknown start date in or around 2006 until on or about September 10, 2010,
18 Respondent was employed as a part-time/contract night relief staff pharmacist at Santa Clara
19 Valley Medical Center (HPE 40398) in San Jose, CA, where by virtue of his employment and his
20 licensure he had access to controlled substances and dangerous drugs.

21 26. During the tenure of his employment, Respondent used this access to divert and steal
22 controlled substances and dangerous drugs, including **OxyContin/oxycodone**.

23 27. The exact number of instances of diversion/theft by Respondent, and the full quantity
24 of controlled substances or dangerous drugs diverted/stolen, are not known, but investigations by
25 Santa Clara Valley Medical Center and Board Inspector(s) substantiated that on at least four (4)
26 occasions, including on August 23, 2010, August 26, 2010, September 4, 2010, and September 5,
27 2010, Respondent removed ten (10) tablets of **oxycodone 5mg** on each occasion (for a total of at
28 least forty (40) tablets) from the Pyxis CII Safe, and took them home with him.

1 FIRST CAUSE FOR DISCIPLINE

2 (Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

3 28. Respondent is subject to discipline under section(s) 4301((f) of the Code, in that
4 Respondent, as described in paragraphs 22 to 27 above, committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance(s))

9 29. 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 22 to 27 above, furnished to himself or another without a valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13
14 THIRD CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance(s))

16 30. 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(s) 11350 and/or 11377, in that
18 Respondent, as described in paragraphs 22 to 27 above, possessed, conspired to possess, and/or
19 assisted in or abetted possession of, a controlled substance, without a prescription.

20
21 FOURTH CAUSE FOR DISCIPLINE

22 (Possession of Hypodermic Needle/Syringe/Drug Paraphernalia)

23 31. Respondent is subject to discipline under section section(s) 4301(j), (o) and/or 4140
24 of the Code, and/or Health and Safety Code section 11364, in that Respondent, as described in
25 paragraphs 22 to 27 above, possessed, conspired to possess, and/or assisted in or abetted
26 possession of, a hypodermic needle or syringe, and/or drug paraphernalia.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 22 to 27 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7
8 SIXTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 33. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 22 to 32 above, engaged in unprofessional conduct.

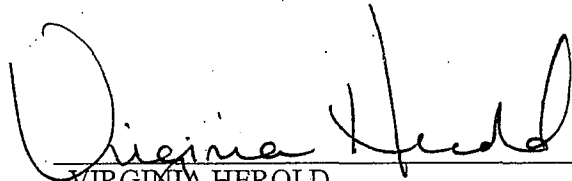
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13 PRAYER

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

- 16 1. Revoking or suspending Pharmacist License No. RPH 51348, issued to John Paul
- 17 Dore (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21
22
23 DATED: _____

7/14/11



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

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