BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 4116

DENYS JOSEPH MICHAUD 3811 Briarwood Street Napa, CA 94558

Pharmacist License No. RPH 26275

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the

Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 16, 2012.

It is so ORDERED on February 15, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 4116
12	DENYS JOSEPH MICHAUD 3811 Briarwood Street Napa, CA 94558 STIPULATED SURRENDER OF
13	Pharmacist License No. RPH 26275
14	Respondent.
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17	In the interest of a prompt and speedy resolution of this matter, consistent with the public
18	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
19	the parties hereby agree to the following Stipulated Surrender of License and Order which will be
20	submitted to the Board for approval and adoption as the final disposition of the Accusation.
21	<u>PARTIES</u>
22	1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
23	this action solely in her official capacity and is represented in this matter by Kamala D. Harris,
24	Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.
25	2. Denys Joseph Michaud (Respondent) is represented in this proceeding by attorney
26	Douglas Pharr, whose address is Law Office of Douglas Pharr, 1700 Second Street, Suite 333,
27	Napa, CA 94559 (telephone (707) 258-2654; fax (707) 258-2820).
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3. On or about August 5, 1969, the Board of Pharmacy issued Pharmacist License No.
 RPH 26275 to Denys Joseph Michaud (Respondent). The Pharmacist License was in full force
 and effect at all times relevant to the charges brought in Accusation No. 4116 and will expire on
 August 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 4116 was filed before the Board of Pharmacy (Board), Department of
Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
statutorily required documents were properly served on Respondent on December 12, 2011.
Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
No. 4116 is attached as exhibit A and incorporated by reference.

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ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 allegations in Accusation No. 4116. Respondent also has carefully read, fully discussed with
14 counsel, and understands the effects of, this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a
hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
his own expense; the right to confront and cross-examine the witnesses against him; the right to
present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
the attendance of witnesses and the production of documents; the right to reconsideration and
court review of an adverse decision; and all other rights accorded by the California
Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation
No. 4116, agrees that cause exists for discipline, and hereby surrenders his Pharmacist License
No. RPH 26275 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 10 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 11 communicate directly with the Board regarding this stipulation and surrender, without notice to or 12 participation by Respondent or his counsel. By signing the stipulation, Respondent understands 13 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the 14 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its 15 16 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, 17 and the Board shall not be disqualified from further action by having considered this matter. 18

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12. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an
integrated writing representing the complete, final, and exclusive embodiment of their agreement.
It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
executed by an authorized representative of each of the parties.

27 28 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 26275, issued to Respondent
Denys Joseph Michaud, is surrendered and accepted by the Board of Pharmacy.

 The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.
 This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

8 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the
9 effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
issued, his wall certificate on or before the effective date of the Decision and Order.

12 4. Respondent may not apply, reapply, or petition for any licensure or registration of the
13 Board for three (3) years from the effective date of the Decision and Order.

If he ever applies for licensure or petitions for reinstatement, the Board shall treat it as
a new application for licensure. Respondent must comply with all laws, regulations and
procedures for licensure in effect at the time the application or petition is filed, and all of the
charges and allegations in Accusation No. 4116 shall be deemed to be true, correct and admitted
by Respondent when the Board determines whether to grant or deny the application or petition.

19 6. Respondent shall pay the agency its costs of investigation and enforcement in the
20 amount of \$4,430.50 prior to issuance of a new or reinstated license.

7. If Respondent should ever apply or reapply for a new license or certification, or
 petition for reinstatement of a license, by any other health care licensing agency in the State of
 California, all of the charges and allegations contained in Accusation No. 4116 shall be deemed to
 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
 other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully
discussed it with my attorney, Douglas Pharr. I understand the stipulation and the effect it will
have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order
voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
Board of Pharmacy.

128/11. DATED: DENYS JOSEPH MICHAUD

I have read and fully discussed with Respondent Denys Joseph Michaud the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

13 17-28-11 DATED:

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DOUGLAS PHARR Attorney for Respondent

ENDORSEMENT

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The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted

for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

18 for consideration by the B 19 Dated: 1/6/201220

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Respectfully submitted,

KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General

/Joshua A. ROOM Deputy Attorney General Attorneys for Complainant

Exhibit A

Accusation No. 4116

1	Kamala D. Harris
2	Attorney General of California FRANK H. PACOE
3	Supervising Deputy Attorney General JOSHUA A. ROOM
4	Deputy Attorney General State Bar No. 214663
5	455 Golden Gate Avenue, Suite 11000
	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. 4116
11	DENYS JOSEPH MICHAUD
12	3811 Briarwood Street Napa, CA 94558A C C U S A T I O N
13	Pharmacist License No. RPH 26275
14	Respondent.
15	
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 August 5, 1969, the Board of Pharmacy issued Pharmacist License
[.] 21	Number RPH 26275 to Denys Joseph Michaud (Respondent). The Pharmacist License was in full
22	force and effect at all times relevant to the charges brought herein and will expire on August 31,
23	2012, unless renewed.
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25	JURISDICTION
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27	Consumer Affairs, under the authority of the following laws. All section references are to the
28	Business and Professions Code (Code) unless otherwise indicated.
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	Accusation

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

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

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

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

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

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

(j) 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.

(1) The conviction of a crime substantially related to the qualifications, functions, and duties
 of a licensee under this chapter.

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

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
revoke a license when it finds that the licensee has been convicted of a crime substantially related
to the qualifications, functions or duties of the license.

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

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

17 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
18 drug or dangerous device except upon the prescription of an authorized prescriber.

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

12. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell, dispense or compound any drug while under the influence of a dangerous drug or alcohol.

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

14. Health and Safety Code section 11173, subdivision (a), provides that no person shall
obtain or attempt to obtain controlled substances, or procure or attempt to procure the
administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
or subterfuge; or (2) by the concealment of a material fact.

1	15. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2	any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3	subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.
4	16. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
5	person to use or be under the influence of any controlled substance in Schedule II (Health and
6	Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when
7	administered by or under the direction of an authorized licensee.
8	COST RECOVERY
9	17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10	administrative law judge to direct a licentiate found to have committed a violation of the licensing
11	act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
12	CONTROLLED SUBSTANCES / DANGEROUS DRUGS
13	18. Section 4021 of the Code states:
14	"Controlled substance' means any substance listed in Chapter 2 (commencing with Section
15	11053) of Division 10 of the Health and Safety Code."
16	19. Section 4022 of the Code states, in pertinent part:
17	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
18	except veterinary drugs that are labeled as such, and includes the following:
19	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
20	prescription,' 'Rx only,' or words of similar import.
21	••••
22	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
23	prescription or furnished pursuant to Section 4006."
24	20. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for
25	compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III
26	controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
27	drug as designated by Business and Professions Code section 4022. The varying compounds are
28	also known generically as Hydrocodone with APAP. These are all narcotic drugs.

Accusation

FACTUAL BACKGROUND

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21. From an unknown start date until on or about November 3, 2010, Respondent was employed as a staff pharmacist at a Raley's Pharmacy in Napa, CA (# 319; PHY 41724), where by virtue of his licensure he had access to controlled substances and dangerous drugs.

22. In the period prior to and/or including November 2010, Respondent used this access to divert/steal controlled substances and dangerous drugs for his own use, including Norco and/or generic Hydrocodone with APAP 10/325 (the Norco generic equivalent) products.

8 23. The exact number of instances of diversion/theft by Respondent, and the full quantity
9 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but
10 investigations by Raley's, police, and Board Inspector(s) revealed/reported the following.

a. In or about May 2010, discrepancies discovered during inventories and audits
of the pharmacy's controlled substance inventory, particularly its Hydrocodone with APAP
10/325 (generic Norco) supplies, led to suspicions that Respondent might be the cause because
the counts were off on a number of occasions after he worked a shift;

b. An audit of the controlled substance inventory for the pharmacy showed that in
the period between May 5, 2010 and October 16, 2010, the pharmacy was short six hundred and
sixty-seven (667) tablets of Norco and/or Hydrocodone with APAP 10/325 (generic Norco);

c. On or about October 27, 2010, diversion was confirmed when a hard count of
 the Hydrocodone with APAP 10/325 inventory was performed on succeeding days, and there
 were tablets missing without intervening prescriptions being filled to explain the missing tablets;
 d. On or about October 20, October 22, October 25, and November 3, 2010, video
 surveillance of Respondent showed him behaving suspiciously and appearing to place tablets of

Norco and/or Hydrocodone with APAP 10/325 in his pocket(s) and/or in his mouth;

e. On or about November 3, 2010, Respondent admitted to taking generic Norco
pills (Hydrocodone with APAP 10/325) from the pharmacy, and to consuming them throughout
the day while he was on duty in the pharmacy (at a rate of 2-8 pills a day). He admitted to having
taken them from the pharmacy for "at least" the last 30-45 days. Respondent agreed to reimburse
Raley's the value of six hundred and ninety-five (695) tablets of generic Norco (\$854.85).

1	FIRST CAUSE FOR DISCIPLINE
2	(Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)
3	24. Respondent is subject to discipline under section 4301(f) of the Code in that
4	Respondent, as described in paragraphs 21 to 23 above, committed one or more acts involving
5	moral turpitude, dishonesty, fraud, deceit, or corruption.
6	SECOND CAUSE FOR DISCIPLINE
7	(Self-Administration of Controlled Substance(s))
8	25. Respondent is subject to discipline under section 4301(h) of the Code and/or Health
9	and Safety Code section 11170, in that Respondent, as described in paragraphs 21 to 23 above,
10	administered one or more controlled substances to himself.
11	THIRD CAUSE FOR DISCIPLINE
12	(Furnishing of Controlled Substance(s))
13	26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
14 ·	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
15	in paragraphs 21 to 23 above, furnished to himself or another without a valid prescription, and/or
16	conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.
17	FOURTH CAUSE FOR DISCIPLINE
18	(Possession of Controlled Substance(s))
19	27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20	4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
21	in paragraphs 21 to 23 above, possessed, conspired to possess, and/or assisted in or abetted
22	possession of, a controlled substance, without a prescription.
23	FIFTH CAUSE FOR DISCIPLINE
24	(Working While Under the Influence)
25	28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
26	and/or section 4327 of the Code, in that Respondent, as described in paragraphs 21 to 23 above,
27	was under the influence of controlled substances while selling or dispensing drugs.
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	Accusation

SIXTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)
29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
21 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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SEVENTH CAUSE FOR DISCIPLINE

(Unlawful Use of Narcotic Controlled Substances)

30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
and/or Health and Safety Code section 11550, in that, as described in paragraphs 21 to 23 above,
Respondent used or was under the influence of, conspired to use/be under the influence of, and/or
assisted in or abetted use/being under the influence of, certain identified controlled substances,
not administered by or under the direction of an authorized licensee.

EIGHTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

31. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
substantially related crime(s), in that on or about April 7, 2011, in the criminal case *People v*. *Denys Joseph Michaud*, Case No. CR154374 in Napa County Superior Court, Respondent was
convicted on the basis of the conduct described in paragraphs 21 to 23 of violating Penal Code
section(s) 484/488 (Petty Theft), a misdemeanor. The conviction was entered as follows:

a. On or about November 5, 2010, based on the conduct described in paragraphs
21 to 23 (and other conduct), Respondent was charged by criminal Complaint in Case No.
CR154374 with violating (1) Penal Code section 487(a) (Grand Theft of Personal Property), a
felony; (2) Penal Code section 459 (Second Degree Commercial Burglary), a felony; (3) Penal
Code section 459 (Second Degree Commercial Burglary), a felony; (4) Penal Code section 459
(Second Degree Commercial Burglary), a felony; (5) Penal Code section 459 (Second Degree
Commercial Burglary), a felony; and (6) Penal Code section 242 (Battery), a misdemeanor.

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1	b. On or about April 7, 2011, upon motion of the District Attorney, a new count
2	was added to the criminal Complaint in Case No. CR 154374 by amendment, for violation of (7)
3	Penal Code section(s) 484/488 (Petty Theft), a misdemeanor. Respondent entered a plea of nolo
4	contendere to this new seventh count, and the existing six prior counts were dismissed.
5 `	c. On or about May 5, 2011, Respondent was found guilty of violating Penal Code
6	section(s) 484/488 (Petty Theft), a misdemeanor, in Case No. CR 154374. Imposition of sentence
7	was suspended and Respondent was placed on criminal probation for three (3) years on terms and
8	conditions including four (4) days in jail (4 days CTS), payment of restitution, completion of an
9	outpatient treatment program if required by probation, a non-harassment order for the victim of
10	the alleged battery, search and drug testing conditions, and fines and fees.
11	NINTH CAUSE FOR DISCIPLINE
12	(Unprofessional Conduct)
13	32. Respondent is subject to discipline under section 4301 of the Code in that
14	Respondent, as described in paragraphs 21 to 31 above, engaged in unprofessional conduct.
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16	PRAYER
17	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18	and that following the hearing, the Board of Pharmacy issue a decision:
19	1. Revoking or suspending Pharmacist License Number RPH 26275, issued to Denys
20	Joseph Michaud (Respondent);
21	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
22	enforcement of this case, pursuant to Business and Professions Code section 125.3;
23	3. Taking such other and further action as is deemed necessary and proper.
24	DATED: 12/1/1 Duging terd
25	VIRGINIAHEROLD
26	Executive Officer Board of Pharmacy Department of Consumer Affairs
27	Department of Consumer Affairs State of California
28	<i>Complainant</i> SF2011202830; 20534172.doc
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	Accusation