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

In the Matter of the Accusation Against:

Case No. 4148

DEFAULT DECISION AND ORDER

WILLIAM J. MUMBERT
P. O. Box 5457
Tahoe City, CA 96145
Pharmacist License No. RPH 48782

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 6, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4148 against William J. Mumbert (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 13, 1996, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 48782 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4148 and expired on December 31, 2011. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

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1 3. On or about September 29, 2011, Respondent was served by Certified and First Class
2 Mail, a copy of the Notice of Automatic Suspension of Pharmacy License and Order for
3 Automatic Suspension (Bus. & Prof. Code section 4301.5) at Respondent's address of record
4 which, pursuant to Business and Professions Code section 4100, is required to be reported and
5 maintained with the Board, which was and is:

6 P. O. Box 5457
7 Tahoe City, CA 96145.

8 4. On or about December 13, 2011, Respondent was served by Certified and First Class
9 Mail copies of the Accusation No. 4148, Statement to Respondent, Notice of Defense, Request
10 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
11 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
12 section 4100, is required to be reported and maintained with the Board, which was and is:

13 P. O. Box 5457
14 Tahoe City, CA 96145.

15 5. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
17 124.

18 6. On or about December 21, 2011, the first class mailing of the aforementioned
19 Accusation documents were returned by the U.S. Postal Service marked "Return to Sender-
20 Addressee Not at this Address"; and "Attempted, Not Known." The address on the documents
21 was the same as the address on file with the Board. Respondent failed to maintain an updated
22 address with the Board and the Board has made attempts to serve the Respondent at the address
23 on file. Respondent has not made himself available for service and therefore, has not availed
24 himself of his right to file a notice of defense and appear at hearing.

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

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

1 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3 4148.

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

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

8 10. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on the
10 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
11 taking official notice of all the investigatory reports, exhibits and statements contained therein on
12 file at the Board's offices regarding the allegations contained in Accusation No. 4148, finds that
13 the charges and allegations in Accusation No. 4148, are separately and severally, found to be true
14 and correct by clear and convincing evidence.

15 11. Taking official notice of its own internal records, pursuant to Business and
16 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
17 and Enforcement is \$2,609.50 as of February 2, 2012.

18 **DETERMINATION OF ISSUES**

19 1. Based on the foregoing findings of fact, Respondent William J. Mumbert has
20 subjected his Pharmacist License No. RPH 48782 to discipline.

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

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

25 a. Respondent is subject to disciplinary action for unprofessional conduct under section
26 4301, subsection (n) (Out of State Discipline) due to the fact that Respondent's Nevada license
27 has been disciplined on December 15, 2000 and December 21, 2010 in prior disciplinary actions.

28

1 Respondent is subject to disciplinary action for unprofessional conduct under section 4301,
2 subsection (l) (Criminal Conviction) in that on or about December 26, 2000, Respondent was
3 convicted of a crime that is substantially related to his duties as a pharmacist. Respondent is
4 subject to disciplinary action for unprofessional conduct under section 4301, subsection (f)
5 (Dishonest Acts) and 4301, subsection (h) (Use of Dangerous Drugs).

6 **ORDER**

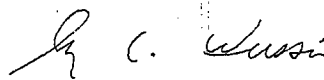
7 IT IS SO ORDERED that Pharmacist License No. RPH 48782, heretofore issued to
8 Respondent William J. Mumbert, is revoked.

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

13 This decision shall become effective on April 12, 2012.

14 It is so ORDERED on March 13, 2012.

15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18 

19
20 By _____

21 STANLEY C. WEISSER
22 Board President

23
24 10836349.DOC
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25 Attachment:
26 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4148

12 **WILLIAM J. MUMBERT**
13 **P. O. Box 5457**
Tahoe City, CA 96145
14 **Pharmacist License No. RPH 48782**

ACCUSATION

15 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 13, 1996, the Board of Pharmacy issued Pharmacist License
22 Number RPH 48782 to William J. Mumbert (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December
24 31, 2011, unless renewed.

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 unless otherwise indicated.

1 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
2 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 5. Section 4300 of the Code states:

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

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found
guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one year.

12 (4) Revoking his or her license.

13 (5) Taking any other action in relation to disciplining him or her as the board in
14 its discretion may deem proper.

15 **STATUTORY PROVISIONS**

16 6. Section 4301 of the Code states:

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

20 ...
21 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
22 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.

23 ...
24 (h) The administering to oneself, of any controlled substance, or the use of any
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
26 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.

27 ...
28 (l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a

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

18
19
20 (n) The revocation, suspension, or other discipline by another state of a license
21 to practice pharmacy, operate a pharmacy, or do any other act for which a license is
22 required by this chapter.

23 7. Section 4022 of the Code states

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

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

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

Dangerous Drugs at Issue

8. **Fioricet** is a brand name for the drug containing acetaminophen, butalbital and
caffeine, a dangerous drug in that its procurement requires a prescription

9. **Phrenilin** is a brand name for the drug containing acetaminophen and butalbital, a
dangerous drug in that its procurement requires a prescription.

Controlled Substances at Issue

10. **Hydrocodone** is a Schedule II controlled substance as designated by Health and
Safety Code section 11055, subdivision (b)(1)(I).

1 11. **Diazepam**, a generic form of the drug Valium, is a Schedule IV controlled substance
 2 as designated by Health and Safety Code section 11057, subdivision (d)(9).

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Out of State Discipline)**

10 13. Respondent is subject to disciplinary action for unprofessional conduct under section
 11 4301, subsection (n), due to the fact that Respondent's Nevada license has been disciplined on
 12 two occasions, as follows:

13 a. On or about December 15, 2000, in a prior disciplinary action entitled *Nevada*
 14 *State Board of Pharmacy v. William J. Mumbert, R.Ph., Certificate of Registration #13225* before
 15 the Nevada State Board of Pharmacy, in Case Number 00-075-RPH-N, Respondent's license was
 16 disciplined by being placed on probation. The Accusation alleged that on or about October 10,
 17 2000, while working at Safeway Pharmacy, Respondent ingested Phrenilin and Fioricet tablets
 18 from the pharmacy without lawful authority. Respondent also removed several Phrenilin and
 19 Fioricet tablets which he placed in unmarked vials and took with him for later use. Later that
 20 evening, Respondent was arrested for driving under the influence, as more fully set forth in
 21 paragraph 14, below.

22 b. On or about December 21, 2010, in a prior disciplinary action entitled *Nevada*
 23 *State Board of Pharmacy v. William J. Mumbert, RPH, Certificate of Registration No. 13225*
 24 before the Nevada State Board of Pharmacy, in Case Number 10-079-RPH-N, Respondent's
 25 license was revoked. The Accusation alleged that on or about October 12, 2010, Respondent was
 26 confronted by his employing pharmacy and admitted to the theft of over 800 hydrocodone/APAP
 27 10/325 tablets and 30 diazepam 10 mg tablets over a period of several months.

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SECOND CAUSE FOR DISCIPLINE

(Criminal Conviction)

14. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subsection (l) in that Respondent was convicted of a crime that is substantially related to his duties as a pharmacist, as follows:

On or about December 26, 2000, in a prior criminal proceeding entitled *State of Nevada vs. William James Mumbert* in Douglas County, Tahoe Township Superior Court, Case Number 00-0966, Respondent was convicted on his no contest plea for violating Nevada Revised Statute 484.379 (driving under the influence of drugs), a misdemeanor. The circumstances are as follows:

On or about October 10, 2000, Respondent was observed weaving and driving erratically. When he was contacted by law enforcement, he was unable to perform field sobriety tests as he had difficulty maintaining his balance. He admitted to officers that he had ingested prescription medications not lawfully prescribed to him (Phrenilin and Fioricet) and that the same medications found in his car were not lawfully prescribed to him. Respondent submitted to a urine test which tested positive for the barbiturate butalbital, consistent with the medications he had ingested and had in his possession.

THIRD CAUSE FOR DISCIPLINE

(Dishonest Acts)

15. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subsection (f), in that Respondent committed dishonest acts when he stole medications from his employing pharmacies, as further described in paragraph 13, above.

FOURTH CAUSE FOR DISCIPLINE

(Use of Dangerous Drugs)

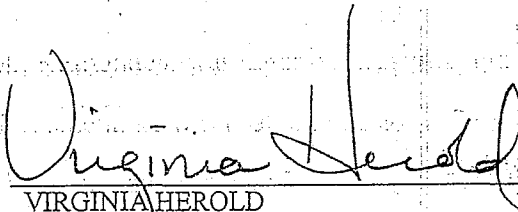
16. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subsection (h), in that Respondent used dangerous drugs to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, as more fully set forth in paragraph 14, above.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 48782, issued to William J. Mumbert.;
2. Ordering William J. Mumbert to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/6/11



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

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