

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

In the Matter of the Accusation Against:

Case No. 4312

DEAN STANLEY WESTPHALEN
4110 17TH Avenue
Kearney, NE 68845

Pharmacist License No. RPH 41307

Respondent.

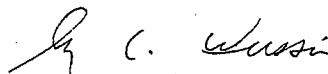
DECISION AND ORDER

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 November 8, 2013.

It is so ORDERED on November 5, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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12 **DEAN STANLEY WESTPHALEN**
13 **4110 17th Avenue**
Kearney, NE 68845
14 **Pharmacist License No. RPH 41307**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy Attorney
23 General.

24 2. Dean Stanley Westphalen (Respondent) is represented in this proceeding by attorney
25 Steven L. Simas, Esq., whose address is: 3835 North Freeway Blvd., Ste. 228, Sacramento,
26 California 95834.
27
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ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 41307, issued to Respondent Dean Stanley Westphalen, is surrendered and accepted by the Board of Pharmacy.

1. 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.

2. Respondent shall lose all rights and privileges as a pharmacist in California as of the 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.

4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 4312 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition. Respondent may not reapply for licensure for at least three years from the effective date of this decision.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$5,047.50.00 prior to issuance of a new or reinstated license.

6. 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. 4312 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, Steven L. Simas, Esq. 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.

DATED: 8-19-13 Dean Stanley Westphalen
DEAN STANLEY WESTPHALEN/
Respondent

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

DATED: 9/13/13 Steven L. Simas
STEVEN L. SIMAS, ESQ.
Attorney for Respondent

ENDORSEMENT

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.

Dated: 19 AUGUST 2013 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

SF2012401919/ Stipulation.rtf

Exhibit A

Accusation No. 4312

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
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11 **STATE OF CALIFORNIA**

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Case No. 4312

13 **DEAN STANLEY WESTPHALEN**
4110 17th Avenue
Kearney, NE 68845

ACCUSATION

14 **Pharmacist License No. RPH 41307**

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 September 26, 1987, the Board of Pharmacy issued Pharmacist License
22 Number RPH 41307 to Dean Stanley Westphalen (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought in this Accusation and will expire
24 on July 31, 2013, 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 (Code) unless otherwise indicated.

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8. Code section 4060 states, in part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

9. Code section 4300 states, in part:

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

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

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

10. Code section 4301 states, in pertinent part:

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

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . [T]he 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 . . . 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.

11. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by the state Uniform Controlled Substances Act, Health and Safety Code section 11000 et seq.

12. Health and Safety Code section 11173, subdivision (a), provides, in part, that no person shall obtain, or attempt to obtain controlled substances by fraud, deceit, misrepresentation, or subterfuge.

13. Health and Safety Code section 11350, subdivision (a); provides that no person shall possess a controlled substance without a prescription.

REGULATORY PROVISIONS

14. 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 his license or registration in a manner consistent with the public health, safety, or welfare.

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COST RECOVERY

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

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FACTUAL STATEMENT

16. For an unknown period, Rite Aid #5999 (Rite Aid) in Angel's Camp, California, employed Respondent as a pharmacist. From on or about September 8, 2010 through April 1, 2011, Respondent was the Pharmacist in Charge at Rite Aid.

17. In or about January through March 2011, Rite Aid employees conducted a drug audit and found a loss of approximately 17 types of controlled substances.

18. On or about March 31, 2011, based upon the results of the drug audit, above, Rite Aid employees conducted a surveillance operation of Respondent. The employees discovered that 100 tablets of hydrocodone 10/325 mg were missing from the pharmacy after Respondent took a lunch break. One employee observed Respondent place two cardboard boxes in his car. The employees found approximately 423 dangerous drugs and 172 controlled substances in unlabeled prescription bottles in Respondent's car.

19. Respondent admitted to stealing furosemide, hydrocodone, loratidine (an over the counter antihistamine), and potassium from the pharmacy.

20. On or about March 31, 2011, the Angel's Camp police department arrested Respondent for violating Health and Safety Code section 11350 (possession of controlled substances) and Penal Code section 459 (burglary) and 487 (grand theft). The arresting officer found the following drugs in Respondent's car: 50 tablets of alprazolam .5 mg, 1 tablet Avinza 60 mg, 5 tablets azithromycin 250 mg, 1 tablet Cialis 10 mg, 17 tablets Cialis 20 mg, 9 tablets

1 Clarinex 5 mg, 5 tablets Clarinex D 12 hour, 55 tablets cyclobenzaprine 10 mg, 9 tablets
2 dicloxacillin 500 mg, 57 tablets, Dilaudid 4 mg, 1 tablet fluconazole 100 mg, 1 tablet fluconazole
3 200 mg, 19 tablets furosemide 80 mg, 3 tablets furosemide 40 mg, 13 tablets furosemide 20 mg, 8
4 tablets hydrocodone with acetaminophen 10/325 mg, 45 tablets hydroxyzine 25 mg, 33 tablets
5 Klor-Con 8 mEq, 13 Levaquin 500 mg, 48 tablets Levitra 20 mg, 19 tablets Lipitor 20 mg, 91
6 tablets Lipitor 10 mg, 2 tablets Meridia 15 mg, 26 tablets Norvasc 5 mg, 4 tablets Oracea 40 mg,
7 39 tablets phentermine 37.5 mg, 1 tablet penicillin VK 500 mg, 1 tablet Tylenol #3 325/30 mg, 1
8 tablet Valacyclovir 1 gm, 2 tablets Viagra 50 mg, 1 tablet Viagra 100 mg, 10 tablets Xenical 120
9 mg.
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11 21. On or about February 24, 2012, in a criminal matter entitled *The People of the State*
12 *of California v. Dean S. Westphalen*, Calaveras County Superior Court Case No. 11F5110,
13 Respondent was convicted by guilty plea for violating Penal Code section 487, subdivision (a),
14 (Grand Theft), a felony, and Health and Safety Code section 11375, subdivision (b)(2),
15 (Possession of a Controlled Substance for Sale), a misdemeanor. The court sentenced
16 Respondent to serve 60 days in jail and three years of formal probation, complete mental health
17 and drug treatment counseling, and ordered him to comply with other terms and conditions.
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19 22. The factual circumstances underlying the 2012 convictions are set forth in paragraphs
20 16 through 20, above.
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22 DRUGS

23 23. Alprazolam is the generic name for Xanax. It is a Schedule IV controlled substance
24 as defined by Health and Safety Code section 11057, subdivision (d), and a dangerous drug
25 within the meaning of Code section 4022. It is used to treat anxiety.
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1 24. Avinza is the trade name for morphine sulfate. It is a Schedule II controlled
2 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L), and a
3 dangerous drug within the meaning of Code section 4022. It is an analgesic.

4 25. Azithromycin is the generic name for Zithromax. It is a dangerous drug within the
5 meaning of Code section 4022. It is an antibiotic.

6 26. Cialis is the trade name for tadalafil. It is a dangerous drug within the meaning of
7 Code section 4022. It is an impotence agent.

8 27. Clarinex is the trade name for desloratidine. It is a dangerous drug within the
9 meaning of Code section 4022. It is an antihistamine.

10 28. Cyclobenzaprine is the generic name for Flexeril. It is a dangerous drug within the
11 meaning of Code section 4022. It is a muscle relaxant.

12 29. Dicloxacillin is the generic name for Dynapen. It is a dangerous drug within the
13 meaning of Code section 4022. It is an antibiotic.

14 30. Dilaudid is the trade name for hydromorphone hydrochloride. It is a Schedule II
15 controlled substance as defined by Health and Safety Code section 11055, subdivision (b)(1)(J),
16 and a dangerous drug within the meaning of Code section 4022. It is a narcotic analgesic.

17 31. Fluconazole is the generic name for Diflucan. It is a dangerous drug within the
18 meaning of Code section 4022. It is an antifungal.

19 32. Furosemide is the generic name for Lasix. It is a dangerous drug within the meaning
20 of Code section 4022. It is a diuretic.

21 33. Hydrocodone with acetaminophen is the generic name for Vicodin. It is a Schedule
22 III controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(5),
23 and a dangerous drug within the meaning of Code section 4022. It is an analgesic.
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1 34. Hydroxyzine is the generic name for Vistaril. It is a dangerous drug within the
2 meaning of Code section 4022. It is an antihistamine and a sedative.

3 35. Klor-Con is the trade name for potassium chloride. It is a dangerous drug within the
4 meaning of Code section 4022.

5 36. Levaquin is the trade name for levofloxacin. It is a dangerous drug within the
6 meaning of Code section 4022. It is an antibiotic.

7 37. Levitra is the trade name for vardenafil. It is a dangerous drug within the meaning of
8 Code section 4022. It is an impotence agent.

9 38. Lipitor is a brand name for atorvastatin calcium. It is a dangerous drug a within the
10 meaning of Code section 4022. It is a statin.

11 39. Meridia is a brand name for sibutramine. It is a Schedule IV controlled substance as
12 defined by Code of Federal Regulations, title 21, section 1308.14, subdivision (e)(10), and a
13 dangerous drug a within the meaning of Code section 4022. It is an anorexiant.

14 40. Norvasc is the trade name for amlodipine. It is a dangerous drug a within the
15 meaning of Code section 4022. It is a calcium channel blocker.

16 41. Oracea is the trade name for doxyxycline. It is a dangerous drug a within the
17 meaning of Code section 4022. It is an antibiotic.

18 42. Phentermine is the generic name for Adipex. It is a Schedule IV controlled substance
19 as defined by Health and Safety Code section 11057, subdivision (f)(4), and a dangerous drug
20 within the meaning of Code section 4022. It is an anorexiant.

21 43. Penicillin VK is a dangerous drug within the meaning of Code section 4022. It is an
22 antibiotic.

1 44. Tylenol #3 is the trade name for acetaminophen with codeine. It is a Schedule III
2 controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(2), and
3 a dangerous drug within the meaning of Code section 4022. It is an analgesic.

4 45. Valacyclovir is a dangerous drug within the meaning of Code section 4022. It is an
5 anti-viral.

6 46. Viagra is the trade name for sildenafil. It is a dangerous drug within the meaning of
7 Code section 4022. It is an impotence agent.

8 47. Xenical is the trade name for orlistat. It is a dangerous drug within the meaning of
9 Code section 4022. It is an anorexiant.
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11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Commission of Acts of Dishonesty)**

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14 48. Respondents' license is subject to discipline for unprofessional conduct under Code
15 section 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud,
16 deceit, or corruption in that he stole and diverted numerous controlled substances and dangerous
17 drugs during his employment with RiteAid, as set forth in paragraphs 16 through 20, above.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Violating State Statutes re: Controlled Substances)**

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21 49. Respondent's license is subject to discipline for unprofessional conduct under Code
22 section 4301, subdivision (j), for violating state statutes regulating controlled substances and
23 dangerous drugs, including but not limited to Code section 4059 and Health and Safety Code
24 sections 11171 and 11173, subdivision (a), and 11350 in that Respondent unlawfully obtained and
25 possessed controlled substances and dangerous drugs, as set forth in paragraphs 16 through 20,
26 above.
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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Substantially Related Convictions)

50. Respondent's license is subject to discipline for unprofessional conduct under Code sections 490 and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacist, as set forth in paragraphs 21 and 22, above.

DISCIPLINARY CONSIDERATIONS

51. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 13, 2011, Respondent entered a Board diversion program. On or about May 10, 2012, the program terminated Respondent and determined that he was a public risk.

52. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 8, 2010, in a prior action, the Board of Pharmacy issued Citation Number CI 2008 40250 for violating Code section 4301, subdivision (f), for unprofessional conduct based upon the September 10, 2007, filing of a criminal complaint for violating Health and Safety Code section 11360, subdivision (a), (Transportation of Marijuana) and an October 18, 2007, conviction for violating Health and Safety Code section 11357, subdivision (c), (Possession of Marijuana). The Citation assessed a fine of \$3,000.00. The Citation is now final and is incorporated by reference as if fully set forth.

53. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 5, 2008, the Director of Health of the State of Nebraska in the disciplinary proceeding was entitled *State of Nebraska vs. Dean S. Westphalen*, Department of Health of the State of Nebraska, Case File No. RP 80-1, issued a decision suspending his pharmacy license for five years, placing his license on probation for an additional five years, and


1 requiring him to comply with other terms and conditions. The State of Nebraska based the
2 license restrictions based upon the following findings: February 18, 1908, felony conviction for
3 possessing a controlled substance; possession of 37 types of controlled substances with intent to
4 deliver; intentional delivery of 10 types of controlled substances beyond the authorized scope of
5 practice as a pharmacist; committing an act of burglary against a pharmacy where he was
6 employed; possession of 20 types of controlled substances in his car with the intent to deliver;
7 possession of controlled substances in his residence with the intent to deliver; delivering 3 types
8 of controlled substances from his car; removing controlled substances from a pharmacy for
9 personal use; general unprofessional conduct; and unlawful invasion of the field of practice of
10 professions licensed in the State of Nebraska.
11

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
14 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 15 1. Revoking or suspending Pharmacist License Number RPH 41307, issued to Dean
16 Stanley Westphalen;
- 17 2. Ordering Dean Stanley Westphalen to pay the Board of Pharmacy the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3; and
20
- 21 3. Taking such other and further action as deemed necessary and proper.
22

23
24 DATED: 1/17/13


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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