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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:

13 **JOANNE LESLIE NAMIKAS**
14 **1892 Country Place**
Ojai, CA 93023

15 **Pharmacist License No. RPH 30259**

16
17 Respondent.

Case No. 6760

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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19 **FINDINGS OF FACT**

20 1. On or about July 6, 2020, Complainant Anne Sodergren, in her official capacity as the
21 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
22 No. 6760 against Joanne Leslie Namikas (“Respondent”) before the Board of Pharmacy.
23 (Accusation attached as Exhibit A.)

24 2. On or about June 8, 1976, the Board of Pharmacy (“Board”) issued Pharmacist
25 License No. RPH 30259 to Respondent. The Pharmacist License expired on January 4, 2019, and
26 has not been renewed.
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1 3. On or about July 10, 2020, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 6760, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 1892 Country Place
8 Ojai, CA 93023.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505(c) and/or Business and Professions Code section 124.

11 5. Government Code section 11506(c) 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
14 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
15 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
16 discretion may nevertheless grant a hearing.

17 6. The Board takes official notice of its records and the fact that Respondent failed to
18 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
19 waived her right to a hearing on the merits of Accusation No. 6760.

20 7. California Government Code section 11520(a) states, in pertinent part:

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

25 8. 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 Accusation No. 6760,
finds that the charges and allegations in Accusation No. 6760, are separately and severally, found
to be true and correct by clear and convincing evidence.

9. The Board finds that the actual costs for Investigation and Enforcement are \$18,566.00 as of October 16, 2020.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Joanne Leslie Namikas has subjected her Pharmacist License No. RPH 30259 to discipline.

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

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

a. Violation of Business and Professions Code section 4301, subdivisions (f), (j), and (o) [dishonest acts];

b. Violation of Business and Professions Code section 4060 [use or possession of controlled substances];

c. Violation of Health and Safety Code section 11350 [use or possession of controlled substances];

d. Violation of Business and Professions Code section 4059 [unlawful furnishing of a dangerous drug];

e. Violation of Health and Safety Code section 11170 [unlawful furnishing of a dangerous drug];

f. Violation of Health and Safety Code section 11171 [unlawful furnishing of a dangerous drug];

g. Violation of Health and Safety Code section 11173 [unlawful furnishing of a dangerous drug];

h. Violation of Business and Professions Code section 4301, subdivision (l) [conviction of a substantially related crime].

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ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 30259, issued to Respondent Joanne Leslie Namikas, is revoked.

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

This Decision shall become effective on January 20, 2021 at 5:00 p.m..

It is so ORDERED December 21, 2020

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By



Greg Lippe
Board President

63678264.DOCX
DOJ Matter ID:LA2019502763

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6760

13 **JOANNE LESLIE NAMIKAS**
14 **1892 Country Place**
Ojai, CA 93023

ACCUSATION

15 **Pharmacist License No. RPH 30259**

16 Respondent.
17

18
19 **PARTIES**

20 1. Anne Sodergren ("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 June 8, 1976, the Board of Pharmacy issued Pharmacist License Number
23 RPH 30259 to Joanne Leslie Namikas ("Respondent"). The Pharmacist License was cancelled on
24 January 4, 2019, and has not been renewed.

25 **STATUTORY PROVISIONS**

26 1. Section 118, subdivision (b) provides, in pertinent part, that that expiration of a
27 license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the
28 period within which the license may be renewed, restored, reissued, or reinstated.

2. Section 4300 of the Code states, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

3. Section 4022 of the Code states:

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

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

"(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."

4. Section 4059 of the Code states, in relevant part:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

5. Section 4060 of the Code states in relevant 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."

1 6. Section 4301 of the Code states, in pertinent part:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
4 not limited to, any of the following:”

5 ...

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

9 ...

10 “(j) The violation of any of the statutes of this state, of any other state, or of the United States
11 regulating controlled substances and dangerous drugs.”

12 ...

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

1 ...

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

6 7. California Health and Safety Code section 11350, subdivision (a), which states as
7 follows:

8 “Except as otherwise provided in this division, every person who possesses (1) any
9 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
10 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
11 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056,
12 or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless
13 upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice
14 in this state, shall be punished by imprisonment in a county jail for not more than one year, except
15 that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal
16 Code if that person has one or more prior convictions for an offense specified in clause (iv) of
17 subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an
18 offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.”

19 8. California Health and Safety Code section 11170, which states as follows:

20 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

21 9. California Health and Safety Code section 11171, which states as follows:

22 “No person shall prescribe, administer, or furnish controlled substance except under the
23 conditions and in the manner provided by this division.”

24 10. California Health and Safety Code section 11173, which states as follows in relevant
25 part:

26 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
27 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
28 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCES**

15 13. "Hydrocodone/Acetaminophen 5/325", "Hydrocodone/Acetaminophen 7.5/325"
16 and "Hydrocodone/Acetaminophen 10/325" are Schedule II controlled substances, as defined in
17 Health and Safety Code section 11055(b)(1)(I), and are categorized as dangerous drugs pursuant to
18 section 4022 of the Code. The brand names for these drugs are Norco and Vicodin.

19 14. "Oxycodone" is a Schedule II controlled substance, as defined in Health and Safety
20 Code section 11055(b)(1)(M), and is categorized as a dangerous drug pursuant to section 4022 of
21 the Code. Oxycodone is sold under many trade names including Percocet and OxyContin.

22 15. Lorazepam is used to treat anxiety. It belongs to a class of drugs called
23 benzodiazepines. Lorazepam is a Schedule IV substance as designated by Health and Safety Code
24 section 11057 (d)(16) and is categorized as a dangerous drug within the meaning of Code section
25 4022 in that it requires a prescription under federal law.

26 16. Alprazolam is used to treat anxiety disorders and panic disorder. It belongs to a class
27 of drugs called benzodiazepines. Alprazolam is a Schedule IV substance as designated by Health
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1 and Safety Code section 11057 (d)(1) and is categorized as a dangerous drug within the meaning
2 of Code section 4022 in that it requires a prescription under federal law.

3 **FACTUAL ALLEGATIONS**

4 17. At all times mentioned herein, Respondent was employed by Ojai Rexall Drugs
5 (“ORD”), located at 1125 Maricopa Highway, Ojai, California. Respondent served as a pharmacist
6 until her termination on October 12, 2018.

7 18. On or about October 18, 2018, ORD submitted a Report of Theft or Loss of
8 Controlled Substances to the Board. ORD’s Pharmacist-in-Charge (“PIC”) informed the Board that
9 he had conducted an audit which revealed the loss of controlled substances. The PIC identified the
10 cause of the loss as employee pilferage by Respondent. The PIC reported the following losses in
11 the audit:

| Drug Name | Total Losses (Tablets) |
|--------------------------------------|------------------------|
| Hydrocodone/acetaminophen 5/325 mg | 86 |
| Hydrocodone/acetaminophen 7.5/325 mg | 59 |
| Hydrocodone/acetaminophen 10/325 mg | 385 |
| Oxycodone 5 mg | 32 |
| Oxycodone/acetaminophen 5/325 mg | 57 |
| Oxycodone/acetaminophen 10/325 mg | 257 |
| Alprazolam .5 mg | 111 |
| Lorazepam 1 mg | 163 |

22 19. On or about October 23, 2018, the PIC submitted an amended DEA form 106 to the
23 Board indicating that the loss of Oxycodone/acetaminophen 5/325 mg was 73 tables, not 57. The
24 PIC also reported that ORD’s review of security camera footage from September 28, 2018 through
25 October 8, 2018 showed five separate incidents where Respondent pocketed drugs taken from drug
26 containers within the narcotic safe. The PIC also informed the Board’s inspector that ORD
27 terminated Respondent on October 12, 2018 to prevent further diversion of controlled substances.
28

When Respondent reported to the pharmacy for her shift, the PIC confronted Respondent about stealing controlled substances from the pharmacy, Respondent admitted the theft and was then terminated.

20. On the same date, ORD reported the theft to the Ventura County Sheriff's Office. Subsequent to Respondent's termination from ORD, a deputy and detective from the Sheriff's Office interviewed Respondent at her home. Respondent agreed to speak with them and admitted to the theft of the prescription drugs from ORD for the previous two and a half years. She told the deputy and detective that she worked every other weekend and claimed that she had taken 16 tablets per week for the last two and a half years.¹ She also provided them with a manufacturer's drug container for lorazepam, which she had taken from ORD. The container contained 43 tablets but originally contained 100 tablets.

21. On or about November 5, 2018, the PIC informed the Sheriff's Office that he found three additional incidents on ORD's surveillance video of Respondent diverting controlled substances. The incidents occurred on the following dates: September 28, 29, and 30, 2018.

22. The PIC conducted on ORD's records from May 1, 2017 through October 11, 2018. The Board's inspector reviewed and confirmed the audit findings, which demonstrated the following losses:

| Drug Name | Beginning Inventory on 5/1/17 | Total Purchased | Return | Total Dispensed | Ending Inventory on 1/12/18 | Drug Shortage |
|--------------------------------------|-------------------------------|-----------------|--------|-----------------|-----------------------------|---------------|
| Hydrocodone/acetaminophen 10/325 mg | 1,632 | 21,500 | 0 | 21,801 | 815 | 516 |
| Hydrocodone/acetaminophen 5/325 mg | 2,015 | 38,500 | 0 | 40,041 | 336 | 138 |
| Hydrocodone/acetaminophen 7.5/325 mg | 744 | 6,000 | 0 | 5,722 | 830 | 192 |
| Oxycodone/acetaminophen 10/325 mg | 503 | 4,400 | -5 | 4,300 | 197 | 401 |
| Oxycodone/acetaminophen 5/325 mg | 678 | 6,900 | 0 | 2,006 | 100 | 5,472 |
| Oxycodone 5 mg | 530 | 500 | 0 | 696 | 301 | 33 |
| Oxycodone/acetaminophen 7.5/325 mg | 0 | 200 | 0 | 130 | 70 | 0 |
| Alprazolam .5 mg | 651 | 16,500 | 0 | 16,322 | 666 | 163 |
| Lorazepam 1 mg | 1,473 | 9,000 | 0 | 8,886 | 1,386 | 201 |

¹ Respondent estimated she had diverted a total of 488 pills. However, taking 16 pills every other weekend for a duration of two and a half years would total 1,040 pills taken.

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2 23. On January 4, 2019, the Board cancelled Respondent's license at her request;
3 however, Respondent did not surrender her wall license.

4 24. On or about April 22, 2019, Respondent pled no contest and was convicted of one
5 (1) misdemeanor count of violating Penal Code section 508 (embezzlement under \$950) in the
6 criminal proceeding entitled *The People of the State of California v. Joanne Leslie Namikas* (Super.
7 Ct. Ventura County, 2019, No. 2018042277). The court sentenced Respondent to ten days in jail,
8 placed her 36 months of probation with terms and conditions, and ordered Respondent to pay
9 restitution and fines/fees. The circumstances of the conviction are that Respondent stole controlled
10 substances from her employer, as described above.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Dishonest Acts)**

13 25. Respondent is subject to disciplinary action pursuant to section 4301, subdivisions
14 (f), (j), and (o) of the Code in that Respondent diverted controlled substances including
15 oxycodone, lorazepam, hydrocodone/acetaminophen, oxycodone/acetaminophen, and alprazolam
16 from ORD in the time period between April 2016 and October 12, 2018. Complainant refers to,
17 and by this reference incorporates, the allegations set forth above in paragraphs 17 through 24
18 above, as though set forth fully.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Use or Possession of Controlled Substances)**

21 26. Respondent is subject to disciplinary action pursuant to section 4060 of the Code,
22 in conjunction with Health and Safety Code sections 11350, in that Respondent diverted
23 controlled substances including hydrocodone/acetaminophen, oxycodone/acetaminophen,
24 oxycodone, lorazepam, and alprazolam from ORD in the time period between April 2016 and
25 October 12, 2018. Complainant refers to, and by this reference incorporates, the allegations set
26 forth above in paragraphs 17 through 24 above, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unlawful Furnishing of a Dangerous Drug)**

3 27. Respondent is subject to disciplinary action pursuant to section 4059 of the Code,
4 for violating Health and Safety Code sections 11170, 11171, and 11173, in that Respondent
5 diverted dangerous drugs including hydrocodone/acetaminophen, oxycodone,
6 oxycodone/acetaminophen, lorazepam, and alprazolam from ORD in the time period between
7 April 2016 and October 12, 2018. Complainant refers to, and by this reference incorporates, the
8 allegations set forth above in paragraphs 17 through 24 above, as though set forth fully.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Conviction of a Substantially Related Crime)**

11 28. Respondent is subject to disciplinary action pursuant to section 4301, subdivision
12 (l), in conjunction with California Code of Regulations section 1770, in that Respondent was
13 convicted of a crime substantially related to the qualifications, functions, and duties of a licensee
14 when, on April 22, 2019, Respondent pled no contest and was convicted of one (1) misdemeanor
15 count of violating Penal Code section 508 (embezzlement under \$950) in the criminal proceeding
16 entitled *The People of the State of California v. Joanne Leslie Namikas* (Super. Ct. Ventura County,
17 2019, No. 2018042277). Complainant refers to, and by this reference incorporates, the allegations
18 set forth above in paragraphs 17 through 24 above, as though set forth fully.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacist License Number RPH 30259, issued to Joanne
23 Leslie Namikas;

24 2. Ordering Joanne Leslie Namikas to pay the Board of Pharmacy the reasonable costs
25 of the investigation and enforcement of this case, pursuant to Business and Professions Code
26 section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 6, 2020



ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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