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

11
12 In the Matter of the Accusation Against:
13 **STEPHEN DAVID ELLWOOD**
643 Via Firenze
14 Cathedral City, CA 92234
15 **Pharmacist License No. RPH 59873**
16 Respondent.

Case No. 3939

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs:
22 2. On or about August 1, 2007, the Board of Pharmacy issued Pharmacist License
23 Number RPH 59873 to Stephen David Ellwood (Respondent). The Pharmacist License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2012, unless renewed.

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8. Section 4081(b) of the Code states:

The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

9. Section 4301 of the Code states:

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:

....

(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, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

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

....

10. Section 4327 of the Code provides that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

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

DRUG

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2 18. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as
3 designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to
4 Business & Professions Code section 4022.

5 19. Ativan, the brand name for lorazepam, is a Schedule IV controlled substance as
6 designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant to
7 Business and Professions Code section 4022. Ativan is used in the treatment of anxiety disorders
8 and for short-term (up to 4 months) relief of the symptoms of anxiety.

9 20. Diazepam, the generic name for Valium, is a Schedule IV controlled substance as
10 designated by Health and Safety Code Section 11057(d)(9), and is a dangerous drug pursuant to
11 Business and Professions Code section 4022.

12 21. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,
13 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
14 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
15 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone
16 is used as a narcotic analgesic in the relief of pain.

17 22. Dalmane, a brand name of flurazepam hydrochloride, is a Schedule IV controlled
18 substance as designated by Health and Safety Code section 11057(d)(14), and is a dangerous drug
19 pursuant to Business and Professions Code section 4022.

20 23. Darvocet, a brand name for propoxyphene napsylate and acetaminophen, is a
21 Schedule IV controlled substance as designated by Health and Safety Code section 11057(c)(2),
22 and is a dangerous drug pursuant to Business and Professions Code section 4022.

23 24. Oxazepam, sold under the brand name Serax, is a Schedule IV controlled substance
24 as designated by Health and Safety Code section 11057(d)(23), is a dangerous drug pursuant to
25 Business and Professions Code section 4022. Oxazepam is used to treat anxiety disorders or
26 alcohol withdrawal symptoms.

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1 recall taking the bottle home. Respondent could not recall what he did with the bottle but stated
2 that he wanted to "discard the bottle" and "take the bottle to the restroom and pour it out," but
3 that he did not. Respondent then stated that he did not remember if he poured the medication out.
4 During the interview, Respondent changed his statement and alleged that he "was hiding a bottle
5 of cough syrup with codeine because he did not want [the pharmacy technician] to take it."

6 30. On September 9, 2009, Ralphs terminated Respondent for being "under the influence
7 of a controlled substance." The LabCorp drug test results for Respondent taken on August 20,
8 2009 reflect that Respondent tested positive for Benzodiazepines: Nordiazepam and Oxazepam.
9 The last prescription for oxazepam that Respondent filled was on May 8, 2008. Respondent did
10 not have a prescription filled for diazepam from March 10, 2007 through August 19, 2009.
11 According to Respondent's Costco prescription records, Respondent filled his first diazepam
12 prescription after his drug test by Ralphs on August 20, 2009. The diazepam prescription (dated
13 June 26, 2009) was received by Costco at 5:53 p.m. on August 20, 2009, and picked up the same
14 day at 6:19 p.m. Respondent went to 10 different pharmacies to fill his prescriptions in a 3 year
15 period, preventing any single pharmacy from knowing what Respondent was taking. Most
16 prescriptions filled by Respondent were Benzodiazepines, such as temazepam, oxazepam,
17 lorazepam, flurazepam, and diazepam. Respondent also filled prescriptions for narcotics such as
18 hydrocodone/APAP and propoxyphene. Respondent also filled for himself, RX #4750093 for
19 Hydrocodone/APAP 5-500 on June 29, 2009 and RX #4750120 for Zolpidem 10 mg on July 6,
20 2009 at Ralphs #611.

21 31. In a letter to Ralphs dated September 1, 2009, Respondent apologized for confusion
22 caused by his statements on August 31, indicating that he was "just back from a trip with a night
23 of poor sleep and hours on the road." Respondent admitted that he "only felt extremely sleepy on
24 the job on one occasion when a dose of Benadryl hung [him] over longer than [he] planned;"
25 however, he did not specify the exact date of this occasion. With regard to the incident on August
26 20, Respondent stated that the prescription medication that he had taken the night before had no
27 history of making him feel intoxicated or unable to perform well after 5 hours. He also stated
28 that he was "a bit sleepy on the 20th date due to an active cold." Respondent also referenced the

1 bottle of cough syrup that he was questioned about. Respondent admitted that the bottle
2 “probably had hydro-codone in it” and it amounted to “just over 80 ml of expiring red syrup
3 whose label was mostly removed.” Respondent explained that he carried the bottle to the back of
4 the store because he did not have clear guidance on how to dispose of it and he had learned that a
5 toilet was the appropriate way to dispose of liquid medications. Respondent stated that he stored
6 the medication temporarily in the back corner of the pharmacy because he did not have a secure
7 place to store the medications away from his technician. Respondent admitted that he “stored it
8 once or twice next to [his] briefcase-bag with the intention of draining it in the toilet in the back
9 corner of the store.” Respondent stated that he ended up disposing the contents “discretely and
10 quickly” at some point that week in the pharmacy sink. He indicated that he “may have thrown
11 out the bottle, but it may also be one of the 2 amber bottles [he keeps] for use in making plant
12 feeding solutions at home.”

13 32. A pharmacist at Ralphs reported that she saw a picture of Respondent sleeping in a
14 sleeping bag in one of the drug aisles. She reported that the photograph showed Respondent
15 sleeping in the aisle where the hydrocodone, diazepam and Lyrica products are stored and that it
16 is an aisle that cannot be seen by customers at the pharmacy counter. The pharmacist reported
17 that a customer, E.P. complained to her, stating that he thought Respondent was drunk because he
18 was stumbling around when he picked up his prescription.

19 33. Ralphs’ pharmacy technician reported that she worked with Respondent often. When
20 she discovered Respondent sleeping on top of a sleeping bag in one of the drug aisles, she took a
21 photograph of him with her phone and showed it to the pharmacist. She also reported that after a
22 few months, Respondent became very sluggish, lethargic, monotone, and quiet. The pharmacy
23 technician also reported that she observed Respondent “impaired” at least three times while
24 working with him. She recalled one incident when a customer, E.P., picked up his prescription
25 and she observed Respondent stumble when he got off his stool and staggered when he walked.
26 The pharmacy technician reported that Respondent’s eyes rolled back and E.P. asked her if
27 Respondent was drunk. When the pharmacy technician asked Respondent if he was okay,

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1 Respondent stated that he had taken four capsules of Benadryl. The pharmacy technician also
2 observed Respondent sleeping on his breaks in the aisle where drugs were stored.

3 34. It was also reported by a Ralphs Clerk that Respondent fell asleep while on hold with
4 a call to a pharmacy on August 3, 2009. She reported that she saw his eyes drooping closed and
5 then completely closed. The Clerk reported that she had to wake Respondent up and that he
6 could not stay on task.

7 35. Respondent filled 83 prescriptions for Ralphs' customers on August 3, 2009 and 24
8 prescriptions for Ralphs' customers on August 20, 2009. A review of the prescriptions filled on
9 August 3, 2009 by Respondent reflect that he made unusual errors when filling prescriptions. For
10 patient E.V., he entered two "enter/delete" pairs before a correct entry for Triazolam .25 mg. For
11 patient L.H., he entered twenty-two "enter/delete" pairs for Advair 250-50, and three
12 "enter/delete" pairs for patient R.H. for Acyclovir 400 mg.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

15 36. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301(j) of the Code in that he violated 21 Code of Federal Regulations Section 1307.21(b)(1)
17 requiring controlled substances to be disposed of properly, in that on September 1, 2009,
18 Respondent admitted that he inappropriately disposed of approximately 80 ml of a red,
19 hydrocodone syrup, a controlled substance, down the pharmacy sink without the proper records of
20 disposal as set forth in paragraphs 27-35 above, incorporated herein by reference.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct – Violation of Chapter)

23 37. Respondent is subject to disciplinary action for unprofessional conduct under section
24 4301(o) of the Code, in that as the Pharmacist in Charge, Respondent failed to maintain an
25 accurate inventory with complete accountability of all dangerous drugs by inappropriately
26 disposing of hydrocodone syrup in violation of Code section 4081(b) and California Code of
27 Regulations section 1718, as detailed in paragraphs 27-35 above, incorporated herein by
28 reference.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Violation of Chapter)

3 38. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301(o) of the Code, in that in that while on duty at Ralphs, Respondent filled and dispensed
5 prescriptions to Ralphs' customers while under the influence of controlled substances/dangerous
6 drugs on August 3, 2009 and August 20, 2009, in violation of Code section 4327, as detailed in
7 paragraphs 27-35 above, incorporated herein by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Violation of Chapter)

10 39. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301(o) of the Code, in that Respondent furnished a controlled substance to himself by filling two
12 prescriptions for himself at Ralphs #611 in violation of Health and Safety Code section 11170, as
13 detailed in paragraphs 27-35 above, incorporated herein by reference.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct – Self Administration of Controlled Substances)

16 40. Respondent is subject to disciplinary action for unprofessional conduct under section
17 4301(h) of the Code, in that Respondent self-administered a controlled substance, Diazepam, to
18 an extent or in a manner dangerous to himself or others and without a valid prescription in
19 violation section 4059(a) and Health and Safety Code section 11171, as detailed in paragraphs 28-
20 35 above, incorporated herein by reference.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct – Violation of Chapter)

23 41. Respondent is subject to disciplinary action for unprofessional conduct under section
24 4301(o) of the Code, in that Respondent self-administered a controlled substance, Diazepam,
25 without a valid prescription in violation section 4059(a) and Health and Safety Code section
26 11171, as detailed in paragraphs 28-35 above, incorporated herein by reference.

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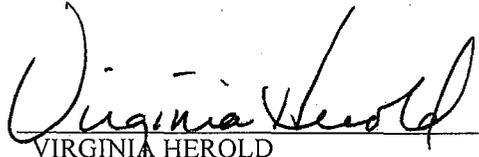
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PRAYER

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 59873, issued to Stephen David Ellwood;
2. Ordering Stephen David Ellwood 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: 4/29/11



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

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