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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:

Case No. 3181

13 **PATRICIA KATHERINE BYRD**
3565 Kirk Ridge Street
14 Santa Rosa, California 95403
Pharmacist License No. RPH 46869

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about March 7, 1994, the Board of Pharmacy issued Pharmacist
22 License Number RPH 46869 to Patricia Katherine Byrd (Respondent). The Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 July 31, 2009, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4300 of the Code states, in pertinent part:

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

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

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

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

11 (4) Revoking his or her license.

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

14 **STATUTORY PROVISIONS**

15 5. Section 4022 of the Code states:

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

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

22 (b) Any device that bears the statement: "Caution: federal law
23 restricts this device to sale by or on the order of a _____,"
24 "Rx only," or words of similar import, the blank to be filled in with
25 the designation of the practitioner licensed to use or order use of
26 the device.

27 (c) Any other drug or device that by federal or state law can be
28 lawfully dispensed only on prescription or furnished pursuant to
Section 4006.

6. Section 4059 of the Code states, in pertinent part, that a person may not
furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
optometrist, or veterinarian.

7. Section 4060 of the Code states, in pertinent 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

1 issued by a certified nurse-midwife pursuant to Section 2746.51, a
2 nurse practitioner pursuant to Section 2836.1, or a physician
3 assistant pursuant to Section 3502.1, or naturopathic doctor
4 pursuant to Section 3640.5, or a pharmacist pursuant to either
5 subparagraph (D) of paragraph (4) of, or clause (iv) of
6 subparagraph (A) of paragraph (5) of, subdivision (a) of Section
7 4052. This section shall not apply to the possession of any
8 controlled substance by a manufacturer, wholesaler, pharmacy,
9 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
10 naturopathic doctor, certified nurse-midwife, nurse practitioner, or
11 physician assistant, when in stock in containers correctly labeled
12 with the name and address of the supplier or producer. . . .

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

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

18 . . .

19 (d) The clearly excessive furnishing of controlled substances in
20 violation of subdivision (a) of Section 11153 of the Health and
21 Safety Code.

22 . . .

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

27 . . .

28 (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, . . .
any provision or term of this chapter or of the applicable federal
and state laws and regulations governing pharmacy, including

1 regulations established by the board or by any other state or federal
2 regulatory agency. . . .

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

6 10. Health and Safety Code section 11158, subdivision (a), provides that no
7 controlled substance classified in Schedule II, III, IV, or V may be dispensed without a
8 prescription.

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

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

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

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

20 COST RECOVERY

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

25 DRUGS

26 16. **Fentanyl** is a Schedule II controlled substance as designated by Health and
27 Safety Code section 11055, subdivision (c)(8), and a dangerous drug within the meaning of Code
28 section 4022. Fentanyl is a strong analgesic, pharmacodynamically similar to Meperidine and
Morphine.

1 pharmacy supply at Walgreen's during the approximate period of time between March 2007 and
2 May 2007. Respondent was terminated from employment at Walgreen's on or about May 18,
3 2007.

4 23. Respondent, by her own admission, was under the influence of dangerous
5 drugs, including Hydrocodone-containing medications, on approximately 10 occasions while
6 working as a pharmacist at Walgreen's.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct: Commission of Acts of Dishonesty)

9 24. Respondents' license is subject to discipline for unprofessional conduct
10 under Code section 4301, subdivisions (d) and (f), for committing acts involving moral turpitude,
11 dishonesty, fraud, deceit, or corruption in that she stole and diverted numerous controlled
12 substances and dangerous drugs during her employment with Walgreen's, as set forth in
13 Paragraphs 21-23, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct: Unlawfully Furnishing Dangerous Drugs without a Prescription)

16 25. Respondent is subject to discipline for unprofessional conduct under Code
17 section 4301, subdivisions (j) and (o), for violating Code section 4059 in that she furnished
18 dangerous drugs to herself without a prescription during her employment with Walgreen's, as set
19 forth in Paragraphs 21-23, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct: Unlawfully Possessing Controlled Substances and Dangerous Drugs)

22 26. Respondent is subject to discipline for unprofessional conduct under Code
23 section 4301, subdivisions (j) and (o), for violating state statutes regulating controlled substances
24 and dangerous drugs, including but not limited to Code sections 4059 and 4060 and Health and
25 Safety Code sections 11158, 11170, 11171, 11173, subdivision (a), and 11350, subdivision (a),
26 in that Respondent unlawfully administered, obtained, and possessed controlled substances and
27 dangerous drugs, by fraud and deceit, during her employment as a pharmacist at Walgreen's, as
28 set forth in Paragraphs 21-23, 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 46869, issued to Patricia Katherine Byrd.

2. Ordering Patricia Katherine Byrd 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; and

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

DATED: 9/24/08



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

SF2008401680