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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. 3209

13 KEITH B. NISONOFF  
10462 E. Prentice Avenue  
Englewood, CO 80111

**A C C U S A T I O N**

14 Pharmacist License No. RPH 43877

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 September 7, 1990, the Board of Pharmacy issued Pharmacist  
22 License Number RPH 43877 to Keith B. Nisonoff (Respondent). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on  
24 November 30, 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 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 the board,  
4 whose default has been entered or whose case has been heard by the board and found guilty, by  
5 any of the following methods:

6           "(1) Suspending judgment.

7           "(2) Placing him or her upon probation.

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

9           "(4) Revoking his or her license.

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

12          5.       Section 4301 of the Code states in pertinent part:

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

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

20          "(g) Knowingly making or signing any certificate or other document that falsely  
21 represents the existence or nonexistence of a state of facts.

22          "(h) The administering to oneself, of any controlled substance, or the use of any  
23 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
24 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
25 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
26 the public the practice authorized by the license.

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

1           "(n) The revocation, suspension, or other discipline by another state of a license to  
2 practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this  
3 chapter.

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

8           6.       Section 4059 of the Code states, in pertinent part, that a person may not  
9 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
10 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not  
11 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,  
12 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13           7.       Section 4060 of the Code states:

14           "No person shall possess any controlled substance, except that furnished to a  
15 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
16 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a  
17 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section  
18 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to  
19 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
20 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall  
21 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
22 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
23 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
24 labeled with the name and address of the supplier or producer.

25           "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,  
26 a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs  
27 and devices."

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8. Code section 4022 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.

9. Section 125.3 of the Code provides, 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.

DRUGS

10. "Diazepam", a benzodiazepine derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(8).

11. "Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and 500 mg. acetaminophen per tablet.

12. "Procardia XL" is a dangerous drug within the meaning of Business and Professions Code section 4022 in that it requires a prescription under federal law.

13. "Carisoprodol" is a dangerous drug within the meaning of Business and Professions Code section 4022 in that it requires a prescription under federal law.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Out of State Discipline)

3 14. Respondent is subject to disciplinary action under section 4301 (n) for  
4 unprofessional conduct in that he was disciplined by the Colorado State Board of Pharmacy. The  
5 circumstances are as follows:

6 A. On or about July 17, 2001, the Colorado State Board of Pharmacy in In the  
7 Matter of Disciplinary Proceedings regarding the license to Practice Pharmacy in the State of  
8 Colorado of Keith Nisonoff, P. Ph. License No. 13628; P-99-029, issued an order suspending  
9 respondent's license for three months and imposed a three year probation.

10 B. On or about August 3, 2004, the Colorado State Board of Pharmacy in In  
11 the Matter of Disciplinary Proceedings regarding the license to Practice Pharmacy in the State of  
12 Colorado of Keith Nisonoff, P. Ph. License No. 13628, Case No. P-030129, issued an order  
13 suspending respondent's license for six months and imposed a five year probation.

14 SECOND CAUSE FOR DISCIPLINE

15 (Furnishing)

16 15. Respondent is subject to disciplinary action under for unprofessional  
17 conduct pursuant to section 4301 (g) and section 4059 in that he in that he furnished controlled  
18 substances without legal authorization. The circumstances are as follows:

19 16. In the Stipulation for the decision by the Colorado State Board of  
20 Pharmacy set forth in 9 A above, Respondent admitted that he dispensed three prescriptions after  
21 the pharmacy's regular business hours without contacting the physicians listed on the  
22 prescription. The prescriptions were for a 5 day supply of 15 tablets for diazepam 5 mg. tablets,  
23 a 15 day supply of 30 tablets of Soma, and a 30 day supply of 30 tablets of Procardia XL 30 mg.  
24 tablets.

25 THIRD CAUSE FOR DISCIPLINE

26 (Possession )

27 17. Respondent is subject to disciplinary action for unprofessional conduct  
28 pursuant to sections 4301 subds. (f) , (g), and section 4060 in that he possessed a controlled

1 substance, Vicodin, without legal authorization therefor. The circumstances follow:

2 18. In the Stipulation for the decision by the Colorado State Board of  
3 Pharmacy in 9 B above, Respondent admitted that on and between December 13, 2002 and May  
4 7, 2003, he was employed at Walgreens Pharmacy #1769, 2000 E. Colfax, Denver, CO 80026  
5 (PDO 243). During that time, the Respondent diverted approximately 250 tablets of hydrocodone  
6 10 mg./acetaminophen 500 mg (a schedule III controlled substance) and approximately 250  
7 tablets of carisoprodol (a prescription drug) by forging a prescription order for each of the drugs.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Administering to oneself)

10 19. Respondent is subject to disciplinary action for unprofessional conduct  
11 pursuant to sections 4301 subds. (h) and (j), in that he diverted Vicodin, a controlled substance,  
12 for self-use as more specifically set forth above in paragraph 18.

13 PRAYER

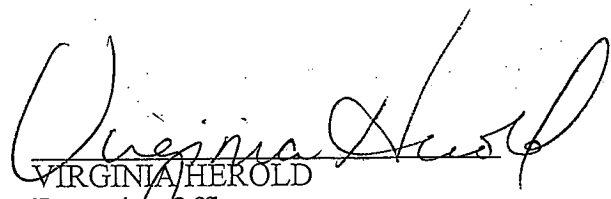
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
15 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

16 A. Revoking or suspending Original Pharmacist License Number RPH  
17 43877, issued to Keith B. Nisonoff Keith B. Nisonoff.

18 B. Ordering Keith B. Nisonoff to pay the Board of Pharmacy the reasonable  
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
20 Code section 125.3;

21 C. Taking such other and further action as deemed necessary and proper.

22 DATED: 6/26/09

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