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

11 In the Matter of the Accusation Against:

Case No. 3219

12 **BLUEPOINT PHARMACY**
7743 North West Lane, Suite B3
13 Stockton, CA 95210
14 Pharmacy License No. PHY 43188

ACCUSATION

15 And

16 **JOHN M. JELETI**
7743 North West Lane, Suite B3
17 Stockton, CA 95210
18 Pharmacy License RPH 49954

19 Respondents.

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21 Complainant alleges:

22 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of
24 Consumer Affairs.

25 **LICENSE HISTORY**

26 2. On March 18, 1998, the Board issued Pharmacist License RPH No. 49554
27 to Respondent John M. Jeleti to practice pharmacy in California. Mr. Jeleti's pharmacy license
28 was in full force and effect at all times relevant to the charges brought herein and will expire on

1 April 30, 2009, unless renewed. Mr. Jeleti was the Pharmacist-in-Charge of Respondent
2 Bluepoint Pharmacy continuously from on or about July 31, 2006, until on or about
3 July 24, 2008.

4 3. On or about September 12, 1997, the Board issued Original Pharmacy
5 Permit No. PHY 43188 to Brian Vu, to do business as Bluepoint Pharmacy. Respondent
6 Bluepoint Pharmacy is located at 7743 North West Lane, Suite B3, Stockton, California 95210.
7 Mr. Vu now is, and has been since on or about July 24, 2008, the Pharmacist-in-Charge of
8 Respondent Bluepoint Pharmacy. Respondent Bluepoint Pharmacy's pharmacy permit was in
9 full force and effect at all times relevant to the charges brought herein and will expire on
10 September 1, 2009, unless renewed.

11 **STATUTORY PROVISIONS**

12 4. Under Business and Professions Code section 4300, the Board may
13 discipline any license, for any reason provided in the Pharmacy Law, (i.e., Business &
14 Professions Code sections 4000 et. seq.)

15 5. Business & Professions Code section 4301 states, in pertinent part:

16 **§ 4301. Unprofessional conduct; licenses procured through
17 misrepresentation, fraud, or mistake**

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

22

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

25

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

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6. Business & Professions Code section 4059.5(a) states as follows:

§ 4059.5. Dangerous drugs and devices; license necessary to order; transfer, sale or delivery; deliveries to hospitals and pharmacies

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by a pharmacist-in-charge or, in his or her absence, another pharmacist designated by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

7. Business & Professions Code section 4081, states, in pertinent part, the following:

§ 4081. Records; hours; preservation; violations

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, . . . who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, . . . shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

...

8. Business & Professions Code section 4113, states, in pertinent part, the following:

§ 4113. Pharmacists-in-charge; designation; responsibilities; notifications

(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacists and the date he or she was designated.

(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

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9. California Code of Regulations, title 16, section 1714(b) and (d), state the following:

§ 1714. Operational Standards and Security.

...

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

...

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

10. California Code of Regulations, title 16, section 1718, states as follows:

§ 1718. Current Inventory Defined.

“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

11. Business & Professions Code section 118 (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

12. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

- 1 a. 84,261 dosage units of Hydrocodone/APAP (multiple strengths);
2 b. 1,641 dosage units of APAP/Codeine (300mg/30mg and 300 mg/60 mg);
3 c. 330 dosage units of Diazepam also known as Valium (5mg and 10mg);
4 d. 3,000 dosage units of Phentermine (37.5 mg); and
5 e. 567 (16oz) bottles of Promethazine with Codeine Syrup.
6 20. (Failure to Provide Effective Control of Security of Controlled
7 Substances/Dangerous Drugs by Bluepoint Pharmacy)

8 From on or about June 20, 2007 through on or about May 28, 2008, Bluepoint
9 Pharmacy failed to provide an effective control on the security of its facilities, space, fixtures
10 and equipment to prevent theft, diversion or other loss of dangerous drugs/controlled substances
11 as alleged in Paragraph 19 above.

- 12 21. (Failure to Maintain Current Inventory of Dangerous Drugs/Controlled
13 Substances by Bluepoint Pharmacy)

14 During the period of on or about June 20, 2007 through on or about May 28,
15 2008, Bluepoint Pharmacy failed to maintain a current inventory of its stock of dangerous drugs
16 and could not account for the dangerous drugs/controlled substances alleged in Paragraph 19
17 above.

- 18 22. (Receipt of Deliveries and Delivery Signatures by non-pharmacists
19 by Bluepoint Pharmacy)

20 From on or about June 20, 2007 through on or about May 28, 2008, Bluepoint
21 Pharmacy allowed Savoum Kheo, a non-pharmacist and sales clerk, to receive and sign for
22 deliveries of dangerous drugs/controlled substances to Bluepoint Pharmacy by Valley Wholesale
23 Drug Company, Inc.

- 24 23. (Ineffective Security and Controlled Substance Shortages
25 under PIC Jeleti)

26 From on or about July 31, 2006, until on or about July 24, 2008, Respondent John
27 M. Jeleti was Bluepoint Pharmacy's pharmacist-in-charge. During that time period, Bluepoint
28 Pharmacy suffered the thefts/losses of dangerous drugs/controlled substances as alleged in
Paragraph 19 above.

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24. (Failure to Maintain Current Inventory by PIC Jeleti)

From on or about July 31, 2006, until on or about July 24, 2008, Respondent John M. Jeleti was Bluepoint Pharmacy’s pharmacist-in-charge. During that time period, Bluepoint Pharmacy failed to maintain a current inventory of its dangerous drugs, and could not account for the dangerous drugs/controlled substances alleged in Paragraph 19 above.

25. (John M. Jeleti’s Allowance of Non-Pharmacist to accept Delivery of Controlled Substances/Dangerous Drugs)

From on or about July 31, 2006, until on or about July 24, 2008, Respondent John M. Jeleti was Bluepoint Pharmacy’s pharmacist-in-charge. During that time period Mr. Jeleti allowed Savoum Kheo, a non-pharmacist and sales clerk for Bluepoint Pharmacy, to sign for and receive delivery of controlled substances/dangerous drugs to Bluepoint Pharmacy made by Valley Wholesale Drug Company, Inc.

FIRST CAUSE FOR DISCIPLINE
(Failure to Provide Effective Control of Security by Bluepoint Pharmacy)

26. Paragraphs 13 through 19, and 20 above are incorporated herein by reference. Respondent Bluepoint Pharmacy is subject to disciplinary action pursuant to Business & Professions Code section 4301(o) on the ground of unprofessional conduct. Respondent violated section 1714(d), title 16, California Code of Regulations by failing to maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly maintained, secured and distributed.

SECOND CAUSE FOR DISCIPLINE
(Failure to Maintain Current Inventory of Dangerous Drugs by Bluepoint Pharmacy)

27. Paragraphs 13 through 19 and 21 above are incorporated herein by reference. Respondent Bluepoint Pharmacy is subject to disciplinary action pursuant to Business & Professions Code section 4301(o) on the ground of unprofessional conduct. Respondent violated Business & Professions Code section 4081(a) and section 1718(b), title 16, California

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1 Code of Regulations, by failing to maintain a current inventory of its stock of dangerous drugs
2 and its inability to account for the dangerous drugs/controlled substances as alleged in Paragraph
3 19 above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Allowing Non-pharmacist to Sign for and Receive Dangerous Drugs Against Bluepoint
6 Pharmacy)

6 28. Paragraphs 13 through 19 and 22 above are incorporated herein by
7 reference. Respondent Bluepoint Pharmacy is subject to disciplinary action pursuant to Business
8 & Professions Code sections 4301(j) and 4301(o) on the ground of unprofessional conduct.
9 Respondent violated Business & Professions Code section 4059.5 by allowing a non-pharmacist
10 to sign for and receive dangerous drugs/controlled substances purchased by Respondent from
11 Valley Wholesale Drug Company.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Failure to Provide Effective Control of Security by John M. Jeleti)

14 29. Paragraphs 13 through 19 and 23 above are incorporated herein by
15 reference. Respondent John M. Jeleti is subject to disciplinary action pursuant to Business &
16 Professions Code sections 4301(o) and 4301(j) on the ground of unprofessional conduct. As the
17 pharmacist in charge of Bluepoint Pharmacy under Business & Professions Code section
18 4113(b), Respondent violated section 1714(d), title 16, California Code of Regulations, by
19 failing
20 to maintain the facilities, space, fixtures, and equipment of Bluepoint Pharmacy so that drugs are
21 safely and properly maintained, secured and distributed.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 (Failure to Maintain Current Inventory of Dangerous Drugs by John M. Jeleti)

24 30. Paragraphs 13 through 19 and 24 above are incorporated herein by
25 reference. Respondent John M. Jeleti is subject to disciplinary action pursuant to Business &
26 Professions Code sections 4301(j) and 4301(o) on the ground of unprofessional conduct. As the
27 pharmacist in charge of Bluepoint Pharmacy under Business & Professions Code section
28 4113(b), Respondent violated Business & Professions Code section 4081 and section 1718, title

1 16, California Code of Regulations, by failing to keep a current inventory of the stock of
2 dangerous drugs at Bluepoint Pharmacy so as to maintain complete accountability for all
3 such dangerous drugs.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 (Allowing Non-pharmacist to Sign for and Receive Dangerous Drugs Against John M. Jeleti)

6 31. Paragraphs 13 through 19 and 25 above are incorporated herein by
7 reference. Respondent John M. Jeleti is subject to disciplinary action pursuant to Business &
8 Professions Code sections 4301(j) and 4301(o) on the ground of unprofessional conduct. As the
9 pharmacist in charge of Bluepoint Pharmacy under Business & Professions Code section
10 4113(b), Respondent violated Business & Professions Code section 4059.5 by allowing Savoum
11 Kheo, a non-pharmacist and former sales clerk for Bluepoint Pharmacy, to sign for and receive
12 dangerous drugs/controlled substances delivered to Bluepoint Pharmacy by Valley Wholesale
13 Drug Company.

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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 No.49954, issued to John M. Jeleti;

2. Revoking or suspending Pharmacy Permit No. PHY 43188, issued to Bluepoint Pharmacy;

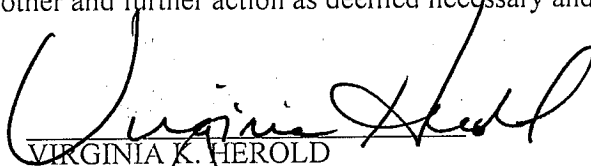
3. Ordering Respondent John M. Jeleti to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Ordering Respondent Blue Point Pharmacy 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;

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

DATED:

3/9/09



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