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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. 3230

12 **GURMUKH SINGH GILL dba**
13 **DAIRYLAND PHARMACY**
8298 Lander Avenue
14 Hilmar California 95324
Original Pharmacy Permit No. PHY 39285,

A C C U S A T I O N

15 and

16 **GURMUKH SINGH GILL**
17 8298 Lander Avenue
Hilmar California 95324
18 Original Pharmacist License No. RPH 37061

19 Respondents.

20
21 Complainant alleges:

22 PARTIES

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

26 2. On or about June 29, 1993, the Board of Pharmacy issued Original
27 Pharmacy Permit Number PHY 39285 (Permit) to Gurmukh Singh Gill dba Dairyland Pharmacy

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(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.

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7. Section 4059.5, subdivision (a), of the Code states:

(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 shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative may sign for and receive the delivery.

8. Section 4081 of the Code states:

(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, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

9. Section 4104 of the Code states:

(a) Every pharmacy shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license, or is discovered or known to have engaged in the theft, diversion, or self-use of dangerous drugs.

(b) Every pharmacy shall have written policies and procedures for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy.

1 (c) Every pharmacy shall report to the board, within 30 days of the receipt
2 or development of the following information with regard to any licensed
individual employed by or with the pharmacy:

3 (1) Any admission by a licensed individual of chemical, mental, or
physical impairment affecting his or her ability to practice.

4 (2) Any admission by a licensed individual of theft, diversion, or
self-use of dangerous drugs.

5 (3) Any video or documentary evidence demonstrating chemical,
6 mental, or physical impairment of a licensed individual to the extent it
affects his or her ability to practice.

7 (4) Any video or documentary evidence demonstrating theft,
diversion, or self-use of dangerous drugs by a licensed individual.

8 (5) Any termination based on chemical, mental, or physical
impairment of a licensed individual to the extent it affects his or her
ability to practice.

9 (6) Any termination of a licensed individual based on theft,
10 diversion, or self-use of dangerous drugs.

11 (d) Anyone making a report authorized or required by this section shall
12 have immunity from any liability, civil or criminal, that might otherwise arise
13 from the making of the report. Any participant shall have the same immunity with
14 respect to participation in any administrative or judicial proceeding resulting from
the report.

15 10. Section 4105 of the Code states:

16 (a) All records or other documentation of the acquisition and disposition
17 of dangerous drugs and dangerous devices by any entity licensed by the board
18 shall be retained on the licensed premises in a readily retrievable form.

19 (b) The licensee may remove the original records or documentation from
20 the licensed premises on a temporary basis for license-related purposes.
21 However, a duplicate set of those records or other documentation shall be retained
22 on the licensed premises.

23 (c) The records required by this section shall be retained on the licensed
24 premises for a period of three years from the date of making.

25 (d) Any records that are maintained electronically shall be maintained so
26 that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge
27 is not on duty, or, in the case of a veterinary food-animal drug retailer or
28 wholesaler, the designated representative on duty, shall, at all times during which
the licensed premises are open for business, be able to produce a hard copy and
electronic copy of all records of acquisition or disposition or other drug or
dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may
upon written request, grant to a licensee a waiver of the requirements that
the records described in subdivisions (a), (b), and (c) be kept on the
licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect
the board's authority under this section or any other provision of this
chapter.

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11. Health and Safety Code section 11209, subdivision (a), states:

(a) No person shall deliver Schedule II, III, or IV controlled substances to a pharmacy or pharmacy receiving area, nor shall any person receive controlled substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or authorized receiving personnel signs a receipt showing the type and quantity of the controlled substances received. Any discrepancy between the receipt and the type or quantity of controlled substances actually received shall be reported to the delivering wholesaler or manufacturer by the next business day after delivery to the pharmacy.

12. California Code of Regulations, title 16, (CCR) section 1714, states:

....

(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 of 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.

....

13. CCR section 1715 states:

(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

(b) In addition to the self-assessment required in subdivision (a) of this section, the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

- (1) A new pharmacy permit has been issued, or
- (2) There is a change in the pharmacist-in-charge, and he or she becomes the new pharmacist-in-charge of a pharmacy.

(c) The components of this assessment shall be on Form 17M-13 (Rev 10/07) entitled "Community Pharmacy & Hospital Outpatient Pharmacy Self-Assessment" (or Form 17M-14 (Rev 10/07) entitled "Hospital Pharmacy Self-Assessment" which are hereby incorporated by reference to evaluate compliance with federal and state laws and regulations.

(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is performed.

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14. CCR section 1793.7 states:

(a) Except as otherwise provided in section 1793.8, any function performed by a pharmacy technician in connection with the dispensing of a prescription, including repackaging from bulk and storage of pharmaceuticals, must be verified and documented in writing by a pharmacist. Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, the pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

(b) Pharmacy technicians must work under the direct supervision of a pharmacist and in such a relationship that the supervising pharmacist is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

(c) A pharmacy technician must wear identification clearly identifying him or her as a pharmacy technician.

(d) Any pharmacy employing or using a pharmacy technician shall develop a job description and written policies and procedures adequate to ensure compliance with the provisions of Article 11 of this Chapter, and shall maintain, for at least three years from the time of making, records adequate to establish compliance with these sections and written policies and procedures.

(e) A pharmacist shall be responsible for all activities of pharmacy technicians to ensure that all such activities are performed completely, safely and without risk of harm to patients.

(f) For the preparation of a prescription for an inpatient of a licensed health facility and for a patient of a licensed home health agency, the ratio shall not be less than one pharmacist on duty for a total of two pharmacy technicians on duty. Pursuant to Business and Professions Code section 4115(g)(1), this ratio shall not apply to the preparation of a prescription for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

15. Section 125.3 of the Code states, 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

16. Hydcodone with acetaminophnen 10/325 tablets; hydcodone with acetaminophnen 10/500 tablets; hydcodone with acetaminophnen 7.5/750 tablets; hydcodone with acetaminophnen 5/500 tablets; hydcodone with acetaminophnen 7.5/500 tablets; and,

1 hydocodone with acetaminophnen 5/325 tablets are all Schedule III controlled substances as
2 designated by Health and Safety Code section 11056(e)(4), and are dangerous drugs within the
3 meaning of Code section 4022, in that under federal law each requires a prescription.

4 FIRST CAUSE FOR DISCIPLINE

5 (Failure to Maintain Pharmacy Security)

6 17. Respondent Gill is subject to disciplinary action under Code section 4301,
7 subd. (o), in that Respondent Gill, as pharmacist in charge of Dairyland Pharmacy, failed to
8 maintain the security of Dairyland Pharmacy from theft or diversion of controlled substances in
9 accordance with CCR section 1714, subd. (d). The circumstances are as follows:

10 18. Between July 24, 2005, and October 8, 2007, Dairyland Pharmacy could
11 not account for an inventory shortage of 170,400 doses of hydocodone with acetaminophnen
12 10/325 tablets, 57,300 hydocodone with acetaminophnen 10/500 tablets, and 1400 hydocodone
13 with acetaminophnen 7.5/750 tablets. Additionally, on an unknown date, pharmacy technician
14 Sonia Cardosos stole approximately 40 hydocodone with acetaminophnen 10/325 mg. tablets
15 from a crate of patient prescription bottles that were to be returned to stock.

16 SECOND CAUSE FOR DISCIPLINE

17 (Failure to Maintain Records)

18 19. Respondent Gill is subject to disciplinary action under Code section 4301,
19 subd. (o), in that Respondent Gill, as pharmacist in charge of Dairyland Pharmacy, failed to
20 maintain the records of acquisitions and disposition and the current inventory of Dairyland
21 Pharmacy in accordance with Code sections 4081, subd. (a), and 4105. The circumstances are as
22 follows:

23 20. Between July 24, 2005, and October 8, 2007, Dairyland Pharmacy could
24 not account for an inventory shortage of 170,400 doses of hydocodone with acetaminophnen
25 10/325 tablets, 57,300 hydocodone with acetaminophnen 10/500 tablets, and 1400 hydocodone
26 with acetaminophnen 7.5/750 tablets. Additionally, during the same period, Dairyland Pharmacy
27 had an overage of 2345 hydocodone with acetaminophnen 5/500 tablets, 174 hydocodone with
28 acetaminophnen 7.5/500 tablets, and 109 hydocodone with acetaminophnen 5/325 tablets.

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Pharmacy Security)

3 31. Respondent Dairyland is subject to disciplinary action under Code section
4 4301, subd. (o), in that Respondent Dairyland failed to maintain the security of controlled
5 substances in accordance with CCR section 1714, subd. (d). The circumstances are as follows:

6 32. Between July 24, 2005, and October 8, 2007, Dairyland Pharmacy could
7 not account for an inventory shortage of 170,400 doses of hydrocodone with acetaminophen
8 10/325 tablets, 57,300 hydrocodone with acetaminophen 10/500 tablets, and 1400 hydrocodone
9 with acetaminophen 7.5/750 tablets. Additionally, on an unknown date, pharmacy technician
10 Sonia Cardosos stole approximately 40 hydrocodone with acetaminophen 10/325 mg. tablets
11 from a crate of patient prescription bottles that were to be returned to stock.

12 NINTH CAUSE FOR DISCIPLINE

13 (Failure to Maintain Records)

14 33. Respondent Dairyland is subject to disciplinary action under Code section
15 4301, subd. (o), in that Respondent Dairyland failed to maintain the records of acquisitions and
16 disposition and current inventory in accordance with Code sections 4081, subd. (a), and 4105.
17 The circumstances are as follows:

18 34. Between July 24, 2005, and October 8, 2007, Dairyland Pharmacy could
19 not account for an inventory shortage of 170,400 doses of hydrocodone with acetaminophen
20 10/325 tablets, 57,300 hydrocodone with acetaminophen 10/500 tablets, and 1400 hydrocodone
21 with acetaminophen 7.5/750 tablets. Additionally, during the same period, Dairyland Pharmacy
22 had an overage of 2345 hydrocodone with acetaminophen 5/500 tablets, 174 hydrocodone with
23 acetaminophen 7.5/500 tablets, and 109 hydrocodone with acetaminophen 5/325 tablets.

24 TENTH CAUSE FOR DISCIPLINE

25 (Failure to Have Pharmacist Sign for Delivery of Controlled Substances)

26 35. Respondent Dairyland is subject to disciplinary action under Code section
27 4301, subs. (j) and (o), in that Respondent Dairyland failed to have a pharmacist sign for the
28 delivery of controlled substances from a wholesaler in accordance with Code section 4059.5,

1 subd. (a), and Health and Safety Code section 11209, subd. (a). The circumstances are as
2 follows:

3 36. Between July 1, 2006, and October 8, 2007, a non-pharmacist signed for
4 35 deliveries of controlled substances from McKesson Drug Company and 44 from Valley
5 Wholesale Drug, for a total of 79 deliveries of controlled substances.

6 ELEVENTH CAUSE FOR DISCIPLINE

7 (Failed to have Pharmacy Technician conduct Pharmacy Technician duties)

8 37. Respondent Dairyland is subject to disciplinary action under Code section
9 4301, subd. (o), in that Respondent Dairyland failed to have a pharmacy technician conduct
10 pharmacy technician duties in accordance with CCR section 1793.7, subd. (e). The
11 circumstances are as follows:

12 38. On or about March 7, 2007, Angela Zaragoza graduated from Valley
13 College of Modesto, California, and completed a pharmacy technician trainee externship at
14 Dairyland Pharmacy. From approximately May 1, 2007, through September 17, 2007, excluding
15 June 2007, Ms. Zaragoza worked full time as a pharmacy technician for approximately 76 shift
16 at Dairyland Pharmacy without a license.

17 TWELFTH CAUSE FOR DISCIPLINE

18 (Failed to Conduct a Pharmacy Self-Assessment)

19 39. Respondent Dairyland is subject to disciplinary action under Code section
20 4301, subd. (o), in that Respondent Dairyland failed to conduct a pharmacy self-assessment in
21 accordance with CCR section 1715. The circumstances are as follows:

22 40. On or about December 8, 2006, when Dairyland Pharmacy was inspected,
23 the pharmacy was notified that they were required to conduct a self-assessment by July 1 of
24 every odd numbered year. On or about February 26, 2008, when Dairyland Pharmacy was again
25 inspected, Dairyland Pharmacy had not done a self-assessment in 2007.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Have Policy and Procedure for Theft or Impairment of Licensed Employees)

41. Respondent Dairyland is subject to disciplinary action under Code section 4301, subd. (o), in that Respondent Dairyland failed to have policies and procedures in place regarding the theft by, or impairment of, a licensed employee in accordance with Code section 4104. The circumstances are as follows:

42. On or about December 8, 2006, when Dairyland Pharmacy was inspected, the pharmacy was notified that they were required to have policies and procedures in place regarding the theft by, or impairment of, a licensed employee. On or about February 26, 2008, when Dairyland Pharmacy was again inspected, Dairyland Pharmacy did not have the required policies and procedures in place regarding the theft by, or impairment of, a licensed employee.

FOURTEEN CAUSE FOR DISCIPLINE

(Failure to Have Pharmacy Technician Job Description and Policy and Procedure)

43. Respondent Dairyland is subject to disciplinary action under Code section 4301, subd. (o), in that Respondent Dairyland failed to have a pharmacy technician job description and policy and procedure in accordance with CCR section 1793.7, subd. (d). The circumstances are as follows:

44. On or about December 8, 2006, when Dairyland Pharmacy was inspected, the pharmacy was notified that they were required to have a pharmacy technician job description and policy and procedure. On or about February 26, 2008, when Dairyland Pharmacy was again inspected, Dairyland Pharmacy did not have the required pharmacy technician job description and policy and procedure. On or about March 3, 2008, Respondent Gill, as pharmacist in charge of Dairyland Pharmacy, furnished a non-Dairyland Pharmacy specific pharmacy technician job description and policy and procedure to the Board.

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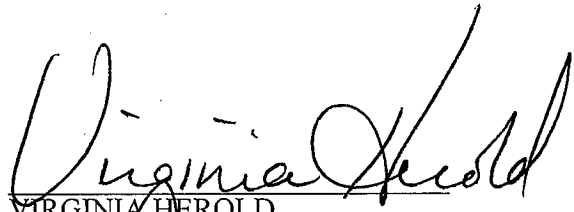
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PRAYER

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 Original Pharmacy Permit Number PHY 39285 issued to Gurmukh Singh Gill dba Dairyland Pharmacy;
2. Revoking or suspending Original Pharmacist License Number RPH 37061 issued to Gurmukh Singh Gill;
3. Ordering Dairyland Pharmacy and Gurmukh Singh Gill 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,
4. Taking such other and further action as deemed necessary and proper.

DATED: 4/16/09


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

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