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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **THOMAS L R HUSAK** **601 Auburn Folsom Road** **Auburn, California 95603** **Original Pharmacist Lic. No. RPH 23267,** **and** **SKYRIDGE PHARMACY** **601 Auburn Folsom Road** **Auburn, California 95603** **Original Permit No. PHY 21812** Respondents.	Case No. 3282 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 7, 1963, the Board of Pharmacy issued Original Pharmacist License Number RPH 23267 to Thomas L R Husak (Respondent Husak).

3. On or about May 1, 1981, the Board of Pharmacy issued Original Permit Number PHY 21812 to Skyridge Pharmacy (Respondent Skyridge).

JURISDICTION

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

5. Code section 4300 states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

. . . .

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6. Code section 4301 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:

. . . .

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

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

(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.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

. . . .

(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.

. . . .

7. 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.

8. Code section 4037, subd. (a), states:

(a) "Pharmacy" means an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail.

9. Code section 4059, subd. (a), states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Code section 4059.5, subd. (a), 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.

11. Code section 4063 states:

No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

12. Code section 4081, subd. (a), 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.

13. Code section 4105, subd. (a), states:

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

14. Code section 4110, subd. (a), states:

(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

15. Code section 4119.5, subd. (a), states:

(a) A pharmacy can transfer a reasonable supply of dangerous drugs to another pharmacy.

16. Code section 4163, subd. (b), states:

(b) Dangerous drugs or dangerous devices shall be acquired from a person authorized by law to possess or furnish dangerous drugs or dangerous devices. When the person acquiring the dangerous drugs or dangerous devices is a wholesaler, the obligation of the wholesaler shall be limited to obtaining confirmation of licensure of those sources from whom it has not previously acquired dangerous drugs or dangerous devices.

17. Code section 4169, subd. (a), states:

(a) A person or entity may not do any of the following:

(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably should have known were misbranded, as defined in Section 111335 of the Health and Safety Code.

(4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond use date on the label.

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

18. Code section 4324, subd. (a), states:

(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

19. Code section 4342, subd. (a), states:

(a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

20. Health and Safety Code section 11165, subd. (d), states:

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber

using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

21. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

22. Health and Safety Code section 11173, subd. (a), states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

23. Title 21, United States Code, Section 351, subd. (d), states:

A drug or device shall be deemed to be adulterated--

. . . .

(d) Mixture with or substitution of another substance

If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor.

24. California Code of Regulations, title 16, section 1717.5, states:

The collection of information authorized by Health and Safety Code section 11165 shall be provided as follows:

(a) For each prescription for a Schedule II controlled substance, the dispensing pharmacy shall provide the following information: the full name and address of the patient; the gender and date of birth of the patient; the DEA (Drug Enforcement Administration) number of the prescriber; the triplicate prescription number; the pharmacy prescription number; the pharmacy license number; the NDC (National Drug Code) number and the quantity of the controlled substance; the ICD-9 (diagnosis code), if available; the date of issue of the prescription, the date of dispensing of the prescription, and the state medical license number of any prescriber using the DEA number of a government exempt facility.

(b) The above information shall be provided in the following format:

(1) For each pharmacy with the capacity to do so, by on-line transmission at least every 30 days and no later than the 18th calendar day of the month following the month in which the prescription is dispensed.

(2) For each pharmacy which does not have the capacity to transmit the information on-line, on a three and one-half inch diskette in a ASCII format or one-half inch nine track magnetic 1600 BPI tape or any other medium approved by the Board of Pharmacy, which diskette, tape or medium shall be mailed or delivered to a location specified by The Board of Pharmacy, at least every 30 days and no later than the 18th calendar day of the month following the month in which the prescription is dispensed.

(3) For each pharmacy without the capacity to comply with either subsection (b)(1) or (2), the original triplicate shall be transmitted to the Department of Justice by the end of the month in which the prescription was filled.

For each pharmacy which submits hard copy pursuant to this subdivision and which pharmacy averages more than 25 triplicate prescriptions per month in any six months, the Board of Pharmacy or its designee may thereafter require that pharmacy to comply with subsections (b)(1) and (2).

(4) As to a prescription which is partially filled or dispensed, the period for compliance with subsections (1), (2), or (3) shall be measured from the earlier of the following dates and times: the prescription is either (1) completely dispensed or (2) can no longer be dispensed.

(c) Every pharmacy which has made a submission as required by this section by July 18, 1998, shall receive a reduction of $75 on its next renewal fee for licensure of the pharmacy by the board. Every pharmacy shall be in compliance with this section and Health and Safety Code section 11165 by September 18, 1998.

25. 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.

FIRST CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs without Prescriber Authorization)

26. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (f), (j) and (o); 4059, subd. (a); and 4063 in that between May 16, 2007 and October 6, 2008, Pharmacist in Charge Respondent Husak, while working at Skyridge Pharmacy located at 601 Auburn Folsom Road in Auburn, California (Skyridge Pharmacy) furnished dangerous drugs without prescriber authorization. The circumstances are as follows:

a. Respondent Husak furnished 32 new and 85 refill prescriptions by Dr. Gruenefeldt to himself without prescriber authorization as follows: 3 new and 11 refill prescriptions of Norco 10/325[1]; 1 new and 1 refill prescription of Depo-testosterone 200 mg/ml -10 ml[2]; 1 new and 3 refill prescriptions of Promethazine/Codeine 473 ml[3]; 1 new and 1 refill prescription of Amoxicillin[4]; 1 new prescription of Atenolol 100 mg[5]; 4 new and 8 refill prescriptions of Celebrex 200 mg[6]; 2 new and 9 refill prescriptions of Cialis 20 mg[7]; 1

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[1] Norco 10/325 is a brand name compound consisting of 10 mg hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by Health and Safety Code section 11056(e)(4), and 325 mg acetaminophen per tablet, and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

[2] Depo-testosterone is a brand name of Testosterone Cypionate and a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subd. (f), and is a dangerous drug pursuant to Code section 4022, in that under federal law it requires a prescription.

[3] Promethazine/Codeine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subd. (c), and is a dangerous drug pursuant to Code section 4022, in that under federal law it requires a prescription.

[4] Amoxicillin is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[5] Atenolol is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[6] Celebrex is a brand name of Celecoxib and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[7] Cialis is a brand name of Tadalafil and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

new prescription of Ertaczo Cream 2% 30 mg[8]; 2 new and 4 refill prescriptions of Ibuprofen 800 mg[9]; 3 new and 12 refill prescriptions of Levitra 20 mg[10]; 1 new prescription of Lovatatin[11]; 1 new and 6 refill prescriptions of MUSE Vials for injection[12]; 3 new and 9 refill prescriptions of Nystatin/TAC Cream 30 mg[13]; 4 new and 10 refill prescriptions of Ranitidine 300 mg[14]; 3 new and 4 refill prescriptions of Terazosin 10 mg[15]; and 1 new and 7 refill prescriptions of Tramadol 50 mg[16].

b. Respondent Husak also furnished 3 new and 7 refill prescriptions by Dr. McKennan plus 8 new and 16 refill prescriptions by Dr. Gruenefeldt to his son Doug Husak without prescriber authorization as follows: 3 new and 7 refill prescriptions of Vicodin[17]; 1 new and 3 refill prescriptions of Zolpidem[18]; 1 new prescription of Promethazine/Codeine

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[8] Ertaczo is a brand name of Sertaconazole Nitrate and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[9] Ibuprofen 800 mg is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[10] Levitra is a brand name of Vardenafil and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription

[11] Lovastatin is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[12] MUSE is a brand name of Alprostadil also known as Prostaglandin and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[13] Nystatin/TAC also known as Nystatin/Triamcinolone is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[14] Ranitidine 300 mg is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[15] Terazosin is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[16] Tramadol is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[17] Vicodin is a brand name compound consisting of 5, 7.5 or 10 mg hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by Health and Safety Code section 11056(e)(4), and 500 or 750 or 660 mg acetaminophen per tablet, and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

[18] Zolpidem is a Schedule IV controlled substance pursuant to Health and Safety Code

(continued...)

480 ml; 2 new and 3 refill prescriptions of Amoxicillin; 1 new and 1 refill prescription of Azithromycin[19]; 1 new and 4 refill prescriptions of Carisoprodol[20]; 1 new and 1 refill prescription of Proctocol-HC Cream 30 gm[21]; 1 new prescription of Tamiflu[22]; 1 new and 2 refill prescriptions of Zyprexa[23].

c. Respondent Husak also furnished 1 new and 6 refill prescriptions by Dr. Cheema plus 1 new and 3 refill prescriptions by Dr. Lee to Angela Harnar without prescriber authorization as follows: 1 new and 6 refill prescriptions of Clonazepam 1 mg[24]; and 1 new and 3 refill prescriptions of HC/APAP 5/500[25].

d. Respondent Husak also furnished 2 new and 4 refill prescriptions by Dr. Goldberg plus 1 new and 2 refill prescriptions by Dr. Gillum plus 1 new and 3 refill prescriptions by Dr. Shapior to Karin Copeland without prescriber authorization as follows: 2 new and 7 refill prescriptions of Clonazepam 1 mg; 1 new prescription of HC/APAP 5/500; and 1 new and 2 refill prescriptions of HC/APAP 10/325.

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section 11057, subd. (d)(32), and is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[19] Azithromycin is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[20] Carisoprodol is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[21] Proctocol-HC Cream 30 gm is a name brand of Hydrocortisone and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[22] Tamiflu is a name brand of Oseltamivir and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[23] Zyprexa is a name brand of Olanazpine and a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[24] Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subd. (d), and is a dangerous drug pursuant to Code section 4022 in that under federal law it requires a prescription.

[25] HC/APAP is a compound consisting of 5, 7.5 or 10 mg hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by Health and Safety Code section 11056(e)(4), and 325 or 500 mg acetaminophen per tablet, and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

e. Respondent also furnished 6 new and 25 refill prescriptions of HC/APAP 5/500 by Dr. Mokhlesi to Jeannie Giguire without prescriber authorization.

SECOND CAUSE FOR DISCIPLINE

(Creating False or Fraudulent Controlled Substance Prescription Records)

27. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (f), (g), (j) and (o); and 4324(a) and Health and Safety Code section 11173, subd. (b), in that between May 16, 2007 and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, entered false prescription information into the pharmacy computer as if they were authorized prescriptions when the prescriptions were not authorized by the prescribers. The circumstances are as follows:

a. Respondent Husak made 5 new and 15 refill prescriptions by Dr. Gruenefeldt to himself with a false or fraudulent controlled substance prescription as follows: Respondent furnished 3 new and 11 refill prescriptions of Norco 10/325; 1 new and 1 refill prescription of Depo-testosterone 200 mg/ml -10 ml; and, 1 new and 3 refill prescriptions of Promethazine/Codeine 473 ml.

b. Respondent Husak also made 3 new and 7 refill prescriptions by Dr. McKennan plus 2 new and 3 refill prescriptions by Dr. Gruenefeldt to his son Doug Husak with a false or fraudulent controlled substance prescription as follows: 3 new and 7 refill prescriptions of Vicodin; 1 new and 3 refill prescriptions of Zolpidem; and, 1 new prescription of Promethazine/Codeine 480 ml.

c. Respondent Husak also made 1 new and 6 refill prescriptions by Dr. Cheema plus 1 new and 3 refill prescriptions by Dr. Lee to Angela Harnar with a false or fraudulent controlled substance prescription as follows: 1 new and 6 refill prescriptions of Clonazepam 1 mg; and 1 new and 3 refill prescriptions of HC/APAP 5/500.

d. Respondent Husak also made 2 new and 4 refill prescriptions by Dr. Goldberg plus 1 new and 2 refill prescriptions by Dr. Gillum plus 1 new and 3 refill prescriptions by Dr. Shapior to Karin Copeland with a false or fraudulent controlled substance prescription

as follows: 2 new and 7 refill prescriptions of Clonazepam 1 mg; 1 new prescription of HC/APAP 5/500; and 1 new and 2 refill prescriptions of HC/APAP 10/350.

e. Respondent also made 6 new and 25 refill prescriptions of HC/APAP 5/500 by Dr. Mokhlesi to Jeannie Giguire with a false or fraudulent controlled substance prescription.

THIRD CAUSE FOR DISCIPLINE

(Records of Acquisition and Disposition)

28. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4081, subd. (a); and 4105 in that between May 16, 2007 and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, failed to maintain pharmacy records of acquisition and disposition and the current inventory. The circumstances are as follows:

a. Respondent Husak failed to account for the shortage (acquisitions greater than dispositions) of 21,101 HC/APAP 10/325 tablets.

b. Respondent Husak also failed to account for the shortage of 270 Oxycodone 10 mg[26] tablets.

c. Respondent Husak also failed to account for the shortage of 175 OxyContin 40 mg[27] tablets.

d. Respondent Husak also failed to account for the shortage of 84 OxyContin 60 mg tablets.

e. Respondent also failed to account for the overage (dispositions greater than acquisitions) of 2561 HC/APAP 5/500 tablets.

f. Respondent also failed to account for the overage of 2031 OxyContin 80 mg tablets.

g. Respondent also failed to account for the overage of 1760 Norco 10/325 tablets.

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[26] Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b), and a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

[27] OxyContin is a brand name of Oxycodone controlled release and a Schedule II controlled substance as designated by Health and Safety Code section 11055(b), and a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

h. Respondent also failed to account for the overage of 1615 Oxycodone 40 mg tablets.

i. Respondent also failed to account for the overage of 1025 Clonazepam 1 mg tablets.

j. Respondent also failed to account for the overage of 537 OxyContin 20 mg tablets.

k. Respondent also failed to account for the overage of 385 Oxycodone 80 mg tablets.

l. Respondent also failed to account for the overage of 240 Oxycodone 20 mg tablets.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing a Controlled Substance to Himself)

29. Respondent Husak is subject to disciplinary action under Code section 4301, subds. (j), (h) and (o); and Health and Safety Code section 11170 in that on January 8, 2007 and August 2, 2007, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, furnished controlled substance prescriptions to himself: prescription number 366002 for #120 OxyContin 10 mg on January 8, 2003, and prescription number 375301 for #100 Norco 10/325 on August 2, 2007.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Report to CURES (Controlled Substance Utilization and Review Evaluation System[28]))

30. Respondent Husak is subject to disciplinary action under Code section 4301, subds. (j) and (o); and Health and Safety Code section 11165, subd. (d), and Title 16 of the California Code of Regulations (hereinafter "CCR") section 1715.5, subd. (a), in that between January 1, 2005, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, failed to report any of the Schedule II-IV controlled substance prescriptions dispensed from Skyridge Pharmacy to the CURES data collection system.

SIXTH CAUSE FOR DISCIPLINE

(Storing Controlled Substances at an Unlicensed Location)

31. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4059.5, subd. (b); 4110, subd. (a); and 4037, subd. (a) in that on or about April 29,

[28] CURES was established by Health and Safety Code section 11165.

2008, and continuing through October 5, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, removed an unknown quantity and type of controlled substances from Skyridge Pharmacy and stored them in his car or at his residence, which are not locations licensed by the Board or any other licensing agency that allowed the storage of controlled substances.

SEVENTH CAUSE FOR DISCIPLINE

(Adulterating a Controlled Substance)

32. Respondent Husak is subject to disciplinary action under Code section 4301 subds. (j) and (o); and Title 21 United States Code section 351, subd. (d)(2) in that at a date prior to October 6, 2008, and only known to Respondent Husak, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, substituted candy pieces into eleven manufacturers' bottles of OxyContin of various strengths, packaged the bottle with a cotton ball and then glued tamper seals back onto the bottles to have then resemble an unopened manufacturer's bottle.

EIGHTH CAUSE FOR DISCIPLINE

(Accepting Dangerous Drugs from Patients)

33. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4081, subd. (a); and 4105, subd. (a), in that between September 21, 2007, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, accepted 5 prescription bottles from patient NH for Cardizem CD 360 mg[29] prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, and did not have records of acquisition of the dangerous drugs.

NINTH CAUSE FOR DISCIPLINE

(Dangerous Drugs of Questionable Quality)

34. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (j) and (o); and 4342, subd. (a) in that between September 21, 2007, and October 6, 2008,

[29] Cardizem CD is a brand name of Diltiazem and a dangerous drug within the meaning of Code section 4022 in that under federal law it requires a prescription.

Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, acquired 5 prescription bottles from patient NH for Cardizem CD 360 mg. prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, and Respondent Husak could not assure the quality of the dangerous drugs he intended to furnish to patients.

TENTH CAUSE FOR DISCIPLINE

(Acquiring Dangerous Drugs from Unauthorized Source)

35. Respondent Husak is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4163, subd. (b); 4169, subd. (a)(1); and 4119.5, subd. (a) in that between September 21, 2007, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, accepted 5 prescription bottles from patient NH for Cardizem CD 360 mg. prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, when NH was not an authorized manufacturer or wholesaler of dangerous drugs.

ELEVENTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs without Prescriber Authorization)

36. Respondent Skyridge is subject to disciplinary action under Code sections 4301, subds. (f), (j) and (o); 4059, subd. (a); and 4063 in that between May 16, 2007 and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, furnished dangerous drugs without prescriber authorization. The circumstances are detailed above in paragraph 26.

TWELFTH CAUSE FOR DISCIPLINE

(Creating False or Fraudulent Controlled Substance Prescription Records)

37. Respondent Skyridge is subject to disciplinary action under Code section 4301, subds. (f), (g), (j) and (o); and 4324, subd. (a) and Health and Safety Code section 11173, subd. (b), in that between May 16, 2007 and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, entered false prescription information into the

Skyridge Pharmacy computer as if they were authorized prescriptions when the prescriptions were not authorized by the prescribers. The circumstances are detailed above in paragraph 27.

THIRTEENTH CAUSE FOR DISCIPLINE

(Records of Acquisition and Disposition)

38. Respondent Skyridge is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4081, subd. (a); and 4105, subd. (a) in that between May 16, 2007 and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, failed to maintain pharmacy records of acquisition and disposition and the current inventory. The circumstances are detailed above in paragraph 28.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Report to CURES)

39. Respondent Skyridge is subject to disciplinary action under Code section 4301 subds. (j) and (o); Health and Safety Code section 11165, subd. (d); and Title 16 of the California Code of Regulations (hereinafter "CCR") section 1715.5, subd. (a) in that between January 1, 2005, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, failed to report and of the Schedule II-IV controlled substance prescriptions dispensed from Skyridge Pharmacy to the CURES data collection system.

FIFTEENTH CAUSE FOR DISCIPLINE

(Storing Controlled Substances at an Unlicensed Location)

40. Respondent Skyridge is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4059.5, subd. (b); 4110, subd. (a); and 4037, subd. (a) in that on or about April 29, 2008, and continuing through October 5, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, removed an unknown quantity and type of controlled substances from Skyridge Pharmacy and stored them in his car or at his residence, which are not locations licensed by the Board or any other licensing agency that allowed the storage of controlled substances.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Adulterating a Controlled Substance)

41. Respondent Skyridge is subject to disciplinary action under Code section 4301, subds. (j) and (o); and Title 21 United States Code section 351, subd. (d)(2) in that at a date prior to October 6, 2008, and only known to Respondent Husak, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, substituted candy pieces into eleven manufacturers' bottles of OxyContin of various strengths, packaged the bottle with a cotton ball and then glued tamper seals back onto the bottles to have then resemble an unopened manufacturer's bottle.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Accepting Dangerous Drugs from Patients)

42. Respondent Skyridge is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4081, subd (a); and 4105, subd. (a) in that between September 21, 2007, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, accepted 5 prescription bottles from patient NH for Cardizem CD 360 mg. prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, and Pharmacist in Charge Husak did not have records of acquisition of the dangerous drugs.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dangerous Drugs of Questionable Quality)

43. Respondent Skyridge is subject to disciplinary action under Code section 4301, subds. (j) and (o); and 4342, subd. (a) in that between September 21, 2007, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, acquired 5 prescription bottles from patient NH for Cardizem CD 360 mg. prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, and Pharmacist in Charge Husak could not assure the quality of the dangerous drugs he intended to furnish to patients.

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NINETEENTH CAUSE FOR DISCIPLINE

(Acquiring Dangerous Drugs from Unauthorized Source)

44. Respondent Skyridge is subject to disciplinary action under Code sections 4301, subds. (j) and (o); 4163, subd. (b); 4169, subd. (a)(1); and 4119.5, subd. (a), in that between September 21, 2007, and October 6, 2008, Respondent Husak, while working at Skyridge Pharmacy as Pharmacist in Charge, accepted 5 prescription bottles from patient NH for Cardizem CD 360 mg. prescription number 072623161807 dated September 21, 2007, and December 14, 2007, and prescription number 062900807607 dated December 10, 2007, when NH was not an authorized manufacturer or wholesaler of dangerous drugs.

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 Pharmacist License Number RPH 23267, issued to Thomas L R Husak.

2. Revoking or suspending Original Permit Number PHY 21812, issued to Skyridge Pharmacy.

3. Ordering Thomas L R Husak and Skyridge 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;

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

DATED: 10/21/09

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

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