EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1299
Facsimile: (415) 703-5480

Attorneys for Complainant

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

In the Matter of the Accusation Against: SHERMAN LUM 1308 Pacific Avenue #104 San Francisco, CA 94109-2755 Pharmacist License No. RPH 21342 Respondent.	Case No. 3297 **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 July 27, 1958, the Board of Pharmacy issued Pharmacist License Number RPH 21342 to Sherman Lum (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

JURISDICTION

3. 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 (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(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.

8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

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

11. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances or a prescription therefor, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, absent a prescription.

13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

14. Health and Safety Code section 11550, in pertinent part, makes it unlawful to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when administered by or under the direction of an authorized licensee.

15. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

17. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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. . . .

"(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."

18. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

19. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

20. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

21. **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

22. **Cialis** is a brand name for **tadalafil**, a dangerous drug as designated by Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

23. **Levitra** is a brand name for **vardenafil**, a dangerous drug as designated by Business and Professions Code section 4022. It is an erectile-dysfunction treatment drug.

FACTUAL BACKGROUND

24. On or about February 3, 2008, Respondent worked as a relief pharmacist at a Lucky Pharmacy (PHY 48515) in Daly City, CA. Respondent diverted/stole or furnished to himself through surreptitious removal, at least one bottle of 500 tablets of **Hydrocodone with APAP 5/500** (generic **Vicodin**) from the stock of the pharmacy. He also consumed or ingested one or more tablets of **hydrocodone**-containing products from pharmacy stock.

25. On or about February 9, 2008, the Lucky Pharmacy reported losses due to diversion/theft on February 3, 2008 including 1,100 tablets of **Hydrocodone with APAP 5/500** (generic **Vicodin**) and 100 tablets of **Hydrocodone with APAP 7.5/325** (generic **Norco**).

26. In subsequent interview(s) with Board Inspector(s), Respondent admitted that on one or more unspecified occasions during his employment history, he had diverted/stolen for his own possession/use "2-3 tablets" of **Xanax**, **Viagra**, and **Cialis** or **Levitra**.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

27. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 24 to 26 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

28. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraph 24 above, administered one or more controlled substances to himself, including **Hydrocodone with APAP** products.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code in that Respondent, as described in paragraphs 24 to 26 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, one or more controlled substance(s).

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that Respondent, as described in paragraphs 24 to 26 above, possessed, conspired to possess, and/or assisted in or abetted possession of, one or more controlled substance(s), without a prescription.

SEVENTH CAUSE FOR DISCIPLINE

(Self-Administration/Use of Controlled Substance)

31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in paragraphs 24 to 26 above, self-administered/used, conspired to self-administer/use, and/or assisted in/abetted self-administration/use of, controlled substance(s), absent prescription.

EIGHTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 24 to 26 above, obtained, conspired to obtain, and/or assisted in or abetted obtaining of controlled substance(s), by fraud, deceit, subterfuge, or concealment of material fact.

TWELFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

33. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 24 to 32 above, engaged in unprofessional conduct.

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:

A. Revoking or suspending Pharmacist License Number RPH 21342, issued to Sherman Lum (Respondent);

B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/14/09

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

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