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9		RE THE PHARMACY
10	DEPARTMENT OF C	CONSUMER AFFAIRS CALIFORNIA
11		
12	In the Matter of the Accusation Against:	Case No. 3374
13	KRIS CARIN MURAOKA	ACCUSATION
14	24092 Ironhead Lane Laguna Niguel, CA 92677	
15	Pharmacist License No. RPH 38703	
16	Respondent.	
17		
18	Complainant alleges:	
19	PAR	TIES
20	1. Virginia Herold (Complainant) bring	gs this Accusation solely in her official capacity
21	as the Executive Officer of the Board of Pharma	cy, Department of Consumer Affairs.
22	2. On or about August 15, 1984, the Bo	pard of Pharmacy issued Pharmacist License
23	Number RPH 38703 to Kris Carin Muraoka (Re	spondent). The Pharmacist License was in full
24	force and effect at all times relevant to the charg	es brought herein and will expire on July 31,
25	2010, unless renewed.	
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1	JURISDICTION
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3	Consumer Affairs, under the authority of the following laws. All section references are to the
4	Business and Professions Code (Code) unless otherwise indicated.
5	4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6	suspended or revoked."
7	5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8	surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
9	disciplinary action during the period within which the license may be renewed, restored, reissued
10	or reinstated.
11	STATUTORY PROVISIONS
12	6. Section 4301 of the Code states:
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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
15	not minted to, any of the following.
16	(f) The commission of any act involving moral turpitude, dishonesty, fraud,
17	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.
18	incensee of otherwise, and whether the act is a felony of inisdemeanor of not.
19	(b) The administration to energy of any controlled substance or the use of any
20	(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
21	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
22	the person to conduct with safety to the public the practice authorized by the license.
23	(i) The vieletion of every of the statutes of this state, or any other state, or of the
24	(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.
25	
-26	(o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 28	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.
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1 Section 4022 of the Code states 7. 2 3 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: 4 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing 5 without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this 6 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 7 or order use of the device. 8 (c) Any other drug or device that by federal or state law can be lawfully 9 dispensed only on prescription or furnished pursuant to Section 4006. Section 4059 of the Code states, in pertinent part, that a person may not furnish any 8. 10 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, 11 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any 12 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, 13 veterinarian, or naturopathic doctor pursuant to Section 3640.7. 14 9. Section 4060 of the Code states: 15 16 No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant 17 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to 18 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist 19 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, 20 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, 21 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and 22 address of the supplier or producer. Health and Safety Code section 11170 provides: 23 10. "No person shall prescribe, administer, or furnish a controlled substance for himself." 24 Health and Safety Code section 11173, subdivision (a) provides: 25 11. "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to 26 procure the administration of or prescription for controlled substances, (1) by fraud, deceit, 27 misrepresentation, or subterfuge; or (2) by the concealment of a material fact." 28 3

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	REGULATORY PROVISIONS		
	12. California Code of Regulations, title 16, section 1769 states:		
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	(b) When considering the suspension or revocation of a facility or a personal		
	license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:		
	(1) Nature and severity of the act(s) or offense(s).		
	(2) Total criminal record.		
	(3) The time that has elapsed since commission of the act(s) or offense(s).		
	(4) Whether the licensee has complied with all terms of parole, probation,		
	restitution or any other sanctions lawfully imposed against the licensee.		
	(5) Evidence, if any, of rehabilitation submitted by the licensee.		
	13. California Code of Regulations, title 16, section 1770 states:		
	For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and		
	Professions Code, a crime or act shall be considered substantially related to the		
5	qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.		
,	COST RECOVERY		
	14. 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.		
	DRUG		
3	15. Fiorinal, a brand name for generic butalbital, acetaminophen, and caffeine, is a		
1	Schedule III controlled substance as designated by Health and Safety Code section 11057,		
r 5	subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section		
	4022.		
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## FACTS

16. At all times referenced herein, Respondent was employed as a per diem pharmacist at a Kaiser Permanente (Kaiser) pharmacy located in Gardena from April 1, 1997, until she resigned on November 18, 2008.

17. On or about July 24, 2008, the Audit and Compliance Data Mining staff for Kaiser conducted a routine, biannual variance check for generic Fiorinal. The amount of Fiorinal ordered and received by the Gardena pharmacy was compared to the amount of prescriptions dispensed plus the stock on hand. A variance of 33.73% was discovered. The data determined that since January 2008, the pharmacy had filled eleven prescriptions for a total quantity of 565 tablets. In the same period the pharmacy received 1600 tablets to fill prescriptions.

18. As a result of the findings, on or about August 19, 2008, the Pharmacist in Charge
 (PIC) of the Kaiser pharmacy conducted an internal audit and confirmed the variance in the
 inventory of generic Fiorinal tablets. The PIC started a daily inventory of all additions
 (ordered/returned to stock), or subtractions (filled prescriptions) of the medication. After a couple
 of weeks, there continued to be an unaccounted variance in the inventory.

16 19. A review of existing video surveillance tentatively identified Respondent as a person
who accessed the pharmacy drawer where the generic Fiorinal was stored, however, there was
insufficient evidence to confirm she was responsible for the theft. Two covert cameras were
installed directly above and to the side of the drawer containing the generic Fiorinal. On or about
October 9, 2008, the covert cameras documented Respondent's theft of 14 tablets of generic
Fiorinal. Two additional thefts were recorded on October 15, 2008, wherein Respondent stole
four tablets, then 100 tablets.

23 20. Respondent took vacation time after October 15 and did not return to work until 24 November 18, 2008. Respondent was interviewed by a senior investigator with Kaiser and 25 confronted with the evidence obtained in the investigation. Respondent admitted stealing the 26 generic Fiorinal allegedly to self-medicate for severe migraine headaches.

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1	21. In a written statement to the Board of Pharmacy, Respondent stated that between June	
2	2008 and November 2008, she became physically and mentally dependent on generic Fiorinal and	
3	took approximately 800-900 tablets from the Kaiser pharmacy.	
4	22. A Kaiser audit determined that between August 15, 2007 and August 18, 2008, there	
5	were 2,375 tablets of generic Fiorinal missing from inventory.	
6	FIRST CAUSE FOR DISCIPLINE	
7 8	(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)	
9	23. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the	
10	Code in that on or about October 9 and October 15, 2008, Respondent was observed diverting	
11	controlled substances and dangerous drugs from her employer using fraud, deceit, and dishonesty,	
12	as detailed in paragraphs 15-21, above. Such conduct is substantially related to the qualifications,	
13	duties, and functions of a pharmacist.	
14	SECOND CAUSE FOR DISCIPLINE	
15	(Unprofessional Conduct – Self-Administration of Illegally Obtained Controlled Substances)	
16		
17	24. Respondent is subject to disciplinary action under section 4301, subdivision (h) of	
18	the Code and Health and Safety Code section 11170 in that in an interview with Kaiser	
19	investigators on or about November 18, 2008, Respondent admitted she diverted generic Fiorinal	
20	for her personal use without a prescription and had become addicted to said controlled substance.	
21	As such, Respondent's use of generic Fiorinal was in a manner as to be dangerous and injurious	
22	to herself and to the public in that it impaired her ability to conduct with safety the practice of	
23	pharmacy.	
24	THIRD CAUSE FOR DISCIPLINE	
25	(Unprofessional Conduct - Violation of California Statutes Regulating Controlled Substances & Dangerous Drugs)	
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27	25. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the	
28	Code in that on or about October 9 and October 15, 2008, Respondent knowingly violated	
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1	Business and Professions Code sections 4022 and 4059 regulating controlled substances and		
2	dangerous drugs, as detailed in paragraphs 15-21, above. Such conduct is substantially related to		
3	the qualifications, duties, and functions of a pharmacist.		
4	FOURTH CAUSE FOR DISCIPLINE		
5 6	(Unprofessional Conduct - Violating Laws & Regulations Governing Pharmacy)		
7	26. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the		
8.	Code in that on or about October 9 and October 15, 2008, Respondent's diversion of controlled		
9	substances violated Health and Safety Code section 11173, subdivision (a), Board of Pharmacy		
10	Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California		
11	Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in		
12	paragraphs 15-21, above.		
13	PRAYER		
14	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
15	and that following the hearing, the Board of Pharmacy issue a decision:		
16	1. Revoking or suspending Pharmacist License Number RPH 38703, issued to Kris		
17	Carin Muraoka;		
18	2. Ordering Kris Carin Muraoka to pay the Board of Pharmacy the reasonable costs of		
19	the investigation and enforcement of this case, pursuant to Business and Professions Code section		
20	125.3;		
21	3. Taking such other and further action as deemed necessary and proper.		
22	9/109 linging huld		
23	DATED:		
24	Board of Pharmacy Department of Consumer Affairs		
25	State of California Complainant		
26	Complainant		
27	SD2009804247		
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