

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 ELENA L. ALMANZO
Deputy Attorney General
4 State Bar No. 131058
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-5524
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3420

12 **JACK KEATES BESWICK**
30848 Hill Drive
13 Exter, CA 93221
14 **Pharmacist License No. RPH 27135**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about August 4, 1970, the Board of Pharmacy issued Pharmacist License
21 Number RPH 27135 to Jack Keates Beswick (Respondent). The Pharmacist License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on June 30,
23 2010, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.
28

1 4. Section 4300 of the Code states:

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

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

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

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

9 "(4) Revoking his or her license.

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

12 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
13 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
14 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
15 may issue the license subject to any terms or conditions not contrary to public policy, including,
16 but not limited to, the following:

17 "(1) Medical or psychiatric evaluation.

18 "(2) Continuing medical or psychiatric treatment.

19 "(3) Restriction of type or circumstances of practice.

20 "(4) Continuing participation in a board-approved rehabilitation program.

21 "(5) Abstention from the use of alcohol or drugs.

22 "(6) Random fluid testing for alcohol or drugs.

23 "(7) Compliance with laws and regulations governing the practice of pharmacy.

24 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
25 certificate of licensure for any violation of the terms and conditions of probation. Upon
26 satisfactory completion of probation, the board shall convert the probationary certificate to a
27 regular certificate, free of conditions.

28

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

6 5. Section 4301 of the Code states in pertinent part:

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

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

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

15 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
16 administering or offering to sell, furnish, give away, or administer any controlled substance to an
17 addict.

18 (j) The violation of any of the statutes of this state, or any other state, or of the United
19 States regulating controlled substances and dangerous drugs.

20 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
21 violation of or conspiring to violate any provision or term of this chapter or of the applicable
22 federal and state laws and regulations governing pharmacy, including regulations established by
23 the board or by any other state or federal regulatory agency.

24 (p) Actions or conduct that would have warranted denial of a license.

25 6. Section 4022 of the Code states: "Dangerous drug" or "dangerous device" means any
26 drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug
27

28

1 that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx
2 only," or words of similar import.

3 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on
4 the order of a _____," "Rx only," or words of similar import, the blank to be filled in with
5 the designation of the practitioner licensed to use or order use of the device.

6 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
7 prescription or furnished pursuant to Section 4006.

8
9 7. Section 4059 of the Code states: A person may not furnish any dangerous drug,
10 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
11 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,
12 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
13 naturopathic doctor pursuant to Section 3640.7.

14 8. Section 4060 of the Code states: "No person shall possess any controlled substance,
15 except that furnished to a person upon the prescription of a physician, dentist, podiatrist,
16 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
18 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
19 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph
20 (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
21 Section 4052. This section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
23 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
24 assistant, when in stock in containers correctly labeled with the name and address of the supplier
25 or producer.
26
27
28

1 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
3 devices."

4 9. Section 4063 of the Code states: No prescription for any dangerous drug or
5 dangerous device may be refilled except upon authorization of the prescriber. The authorization
6 may be given orally or at the time of giving the original prescription. No prescription for any
7 dangerous drug that is a controlled substance may be designated refillable as needed.

8 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.
12

13 11. Health and Safety Code section 11171 provides: No person shall prescribe,
14 administer, or furnish a controlled substance except under the conditions and in the manner
15 provided by this division.

16 12. Health and Safety Code section 11173 provides: (a) No person shall obtain or
17 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
18 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
19 (2) by the concealment of a material fact.
20

21 (b) No person shall make a false statement in any prescription, order, report, or record, required
22 by this division.

23 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of,
24 or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
25 veterinarian, registered nurse, physician's assistant, or other authorized person.

26 (d) No person shall affix any false or forged label to a package or receptacle containing controlled
27 substances.
28

DRUGS

1
2 13. "Viagra" is a dangerous drug as defined by Business and Professions Code section
3 4022.

4 14. "Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate also known as
5 dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code
6 section 11056(e)(4), and 500 mg. acetaminophen per tablet.

7
8 15. "Cialis" is a dangerous drug as defined by Business and Professions Code section
9 4022.

10 16. "Vaniqa" is a dangerous drug as defined by Business and Professions Code section
11 4022.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct)

14 17. Respondent is subject to disciplinary action under section Business and Professions
15 Code section 4301 for unprofessional conduct in that on or about June 11, 2008, respondent
16 attempted to leave Longs Store #500, located at 1455 E Noble Avenue, Visalia, California, with
17 a prescription for 11 tablets of Viagra 100 mg without paying for said medication.¹

18 SECOND CAUSE FOR DISCIPLINE

19 (Unlawful Possession)

20 18. Respondent is subject to disciplinary action under sections 4301 (j) and (o) in
21 conjunction with 4060 for unlawful possession of a controlled substance. The circumstances are
22 as follows:

23 19. On or about June 6, 2008, respondent refilled prescription number RX 633549 for
24 Hydrocodone/APAP 5/500 for himself without authorization from a lawful prescriber.
25

26
27 ¹ An Audit was conducted at the Longs #500 which showed a loss of 72 Viagra 100 mg.
28 tablets over the preceding seven months.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Furnishing)

3 20. Respondent is subject to disciplinary action under sections 4059 and 4301 (h) in
4 conjunction with Health and Safety Code section 11171 in that he furnished a controlled
5 substance without a valid prescription therefor. The circumstances are that: on or about June 6,
6 2008, respondent refilled prescription number RX 633549 for Hydrocodone/APAP 5/500 for
7 himself without authorization from a lawful prescriber.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Unauthorized Prescriptions)

10 21. Respondent is subject to disciplinary action under section 4063 in that from
11 November 15, 2007 until June 6, 2008, respondent admitted refilling medications, he previously
12 received as samples from his medical provider, without obtaining a lawful prescription from a
13 prescriber or authorization from his medical provider for the refills.

14 FIFTH CAUSE FOR DISCIPLINE

15 (Obtained Controlled Substances through Fraud)

16 22. Respondent is subject to disciplinary action under section 4301 (g) and Health and
17 Safety Code section 11173 (a) and (b) in that he obtained controlled substances through fraud.
18 The circumstances are as follows:

19 23. On or about June 6, 2008, respondent refilled prescription number RX 633549 for
20 Hydrocodone/APAP 5/500 for himself without authorization from a lawful prescriber.

21 24. From March 17, 2008 to June 6, 2008, respondent admitted filling prescriptions for
22 dangerous drugs he had received as samples without first obtaining a prescription therefor.

23 25. On or about January 28, 2008, respondent wrote a prescription for himself for
24 Vaniqa 13.9 %, a dangerous drug, without authorization from a prescriber. Respondent admitted
25 that he obtained the prescription for his girlfriend.

26 DISCIPLINE CONSIDERATIONS

27 26. To determine the degree of discipline, if any, to be imposed on respondent,
28 Complainant alleges that on or about November 5, 1996, in a prior disciplinary action entitled "In

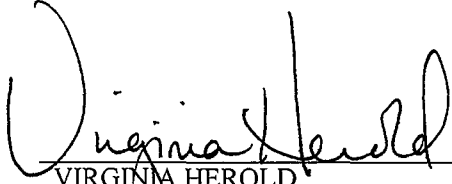
1 the Matter of the Accusation Against Jack Keates Beswick before the Board of Pharmacy, in Case
2 Number 1837", respondent's license was revoked, said revocation was stayed, and he was placed
3 on five years probation for convictions of two counts of forging prescriptions and five counts of
4 prescribing, administering or furnishing controlled substances for himself. Respondent also
5 admitted to filling prescriptions for Alprazolam for his girlfriend without authorization. That
6 decision is now final and is incorporated by reference as if fully set forth. A copy of the decision
7 is attached as Exhibit A.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Revoking or suspending Pharmacist License Number RPH 27135, issued to Jack
12 Keates Beswick.
- 13 2. Ordering Jack Keates Beswick to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: 3/30/10


20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

26
27
28 SA2009101735
10531740.doc