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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 3443

FIRST AMENDED ACCUSATION

13 **DEBBI GAYLE CHAMBERS HAYES**
14 **P.O. Box 6026**
Lake Isabella, CA 93240

15 **Pharmacist License No. RPH 36954**

16 Respondents.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 16, 1982, the Board of Pharmacy (Board) issued
23 Pharmacist License No. RPH 36954 to Debbi Gayle Chambers Hayes (Respondent Hayes). The
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on August 31, 2010, unless renewed.
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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a
6 license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the
7 period within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee,
10 a board may suspend or revoke a license on the ground that the licensee has been convicted of a
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
12 or profession for which the license was issued.

13 (b) Notwithstanding any other provision of law, a board may exercise any authority to
14 discipline a licensee for conviction of a crime that is independent of the authority granted under
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the licensee's license was issued.

17 (c) A conviction within the meaning of this section means a plea or verdict of guilty
18 or a conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code."

23 6. Section 4300 states, in pertinent part, that every license issued by the Board is
24 subject to discipline, including suspension or revocation.

25 7. Section 4301 states, in pertinent part:

26 "The board shall take action against any holder of a license who is guilty of
27 unprofessional conduct or whose license has been procured by fraud or misrepresentation or

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1 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
2 following:

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4 (c) Gross Negligence.

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

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

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

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15 (l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. . . A plea or verdict of
20 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the
21 meaning of this provision.

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

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REGULATORY PROVISIONS

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8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

"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 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."

9. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d),

state:

"(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."

10. California Code of Regulations, title 16, section 1718, states: "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

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COST RECOVERY

11. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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

(Conviction of Substantially Related Crime)

12. Respondent is subject to disciplinary action under sections 4301, subdivisions (f) and (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacist.

a. On or about August 14, 2009, after pleading *nolo contendere*, Respondent Hayes was convicted of one felony count of violating Penal Code section 182, subdivision (a)(5) [conspiracy to commit any act injurious to the public health] in the criminal proceeding entitled *The People of the State of California v. Debbi Gayle Chambers Hayes* (Super. Ct. Kern County, Case No. BF126665B). Respondent was placed on probation for three years with terms and conditions.

b. The circumstances surrounding the conviction are that on or about August 1, 2006, through January 31, 2007, Respondent Hayes, while serving as the Director of Pharmacy and pharmacy consultant at Kern Valley Healthcare District (KVHD) and consultant pharmacist to its skilled nursing facility, conspired with other health care practitioners at KVHD to order and administer psychotropic medications without medical indications that resulted in the neglect and assault of eight elderly patients at the facility.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under sections 4301, subdivision (c), in that, from on or about August 1, 2006, until on or about January 31, 2007, Respondent was

1 grossly negligent while serving as the Director of Pharmacy and pharmacy consultant at KVHD
2 and its skilled nursing facility in the following respects:

3 a. Respondent wrote physician orders for psychotropic medications (Depakote,
4 Risperdal, Seroquel, and Zyprexa) to residents of KVHD without a protocol in place and without
5 obtaining the physician's oral or written authorization prior to writing the order. This resulted in
6 the chemical restraining of eight elderly residents (M.B., J.S., A.Z., J.W., V.K., E.D., L.Z. and
7 O.T.¹) who suffered physical and emotional harm.

8 b. Respondent knowingly took medication orders from KVDH Director of Nursing
9 Gwen Hughes, R.N. prior to obtaining a physician's oral or written authorization when
10 Respondent knew or should have known that Ms. Hughes had no independent authority to
11 authorize or prescribe medication orders for the residents of KVDH.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Safety and Security of the Pharmacy)**

14 14. Respondent Hayes is subject to disciplinary action under sections 4301,
15 subdivisions (j) and (o) and California Code of Regulations, title 16, section 1714 subdivision (d),
16 as follows:

17 a. Respondent Hayes was pharmacist-in-charge (PIC) of Mesa Clinical Pharmacy
18 (Mesa Pharmacy) located at 12608 Mt. Mesa Road, Lake Isabella, Ca. 93240 from approximately
19 March 14, 2008 to approximately February 20, 2009. Respondent Hayes failed to maintain the
20 security of the prescription department of Mesa Pharmacy including provisions for effective
21 control against theft or diversion of dangerous drugs in that on and between March 17, 2008 and
22 August 31, 2008, Mesa Pharmacy lost 1407 tablets of the following Schedule II controlled
23 substances:

24 Adderall 20 mg	200
25 Adderall XR 10 mg	70
26 Adderall XR 20 mg	170

27 ¹ The true names of the patients are being withheld due to privacy concerns but will be
28 identified and provided in discovery, if such a request is made.

1	Adderall XR 30 mg	70
2	generic Adderall 5 mg	340
3	generic Adderall 10 mg	70
4	generic Adderall 20 mg	140
5	Concerta 54 mg	151
6	Focalin XR 10 mg	40
7	Focalin XR 20 mg	100
8	Methlphenidate 5 mg	46
9	Methylphenidate 20 mg	10
10	Total Missing	1407

11 Mesa Pharmacy has no records of acquisition and disposition to account for the above
12 mentioned loss. Further, multiple on-call pharmacists at Mesa Pharmacy were given a key
13 allowing access to Mesa Pharmacy after hours to obtain emergency medications for the board and
14 care patients.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 15. Respondent Hayes is also subject to disciplinary action under sections 4306.5, in that
18 in committing the acts alleged in paragraphs 14-16, Respondent committed acts which constitute
19 unprofessional conduct. Paragraphs 14-16 are hereby incorporated by reference as though fully
20 set forth herein.

21 **MATTERS IN AGGRAVATION**

22 16. To determine the degree of penalty to be imposed, if any, Complainant makes the
23 following allegations:

24 a. On or about January 18, 2006, Respondent Hayes was issued
25 Citation No. CI 2005 30861 which alleged that on or about June 16, 2005 Debbi Gayle Chambers
26 Hayes, RPH 36954, Pharmacist-In-Charge at Kern Valley Healthcare District, HPE 32729, allowed
27 the compounding of injectable sterile drug products without the pharmacy being licensed by the
28 board in violation of Business and Professions Code section 4127.1.

1 b. On or about March 1, 2007, Respondent Hayes was issued Citation
2 No. CI 2006 33194 which alleged that on or about January 1, 2006 to on or about October 17, 2006,
3 Respondent Hayes, RPH 36954, Pharmacist-In-Charge at Kern Valley Healthcare District, HPE
4 32729 failed to have sufficient security of the pharmacy in place and allowed the pharmacy
5 technician and the night shift nursing supervisor to have possession of the keys to the pharmacy. In
6 addition, the pharmacy technician was allowed to perform her duties without the direct supervision
7 of a pharmacist in violation of Business and Professions Code section 4115 subdivision (a).
8 Respondent was fined \$500.00 and the citation is now final.

9 c. On or about November 21, 2007, Respondent Hayes was issued Citation
10 No. CI 2007 34838 which alleged that on or about September 2006 to on or about January 2007,
11 Respondent Hayes, RPH 36954, Pharmacist-In-Charge at Kern Valley Healthcare District, HPE
12 32729 wrote orders for medication and labs for multiple residents of the skilled nursing facility
13 without an adequate protocol in place in violation of Business and Professions Code section 4052.2.
14 Respondent was also charged with violation of California Code of Regulations section 1714,
15 subdivisions (d) and (e) in that on or about June 11, 2007, personnel were allowed possession of a
16 key to the licensed area where dangerous drugs were stored. Respondent was fined \$1500.00 and
17 the citation is now final.

18 **PRAYER**

19 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board issue a decision:

- 21 1. Revoking or suspending Pharmacist License No. 36954, issued to Respondent Hayes;
- 22 2. Ordering Respondent Hayes to pay the Board the reasonable costs of the investigation
23 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 6/22/10

Virginia Herold

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

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