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

10 In the Matter of the Accusation Against:

Case No. 3602

11 **MICHELLE YEE**
12 **3309 Noriega Street**
13 **San Francisco, CA 94122**

A C C U S A T I O N

14 **Pharmacist License No. RPH 53971**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 27, 2002, the Board of Pharmacy issued Pharmacist License No.
22 RPH 53971 to Michelle Yee (Respondent). The License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

24
25 JURISDICTION

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

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

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

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12
13 STATUTORY AND REGULATORY PROVISIONS

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

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

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

22 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
23 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
24 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
25 to the extent that the use impairs the ability of the person to conduct with safety to the public the
26 practice authorized by the license.

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

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

5 8. California Code of Regulations, title 16, section 1770, states:

6 "For the purpose of denial, suspension, or revocation of a personal or facility license
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
8 crime or act shall be considered substantially related to the qualifications, functions or duties of a
9 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
10 licensee or registrant to perform the functions authorized by her license or registration in a
11 manner consistent with the public health, safety, or welfare."

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

14 10. Section 4063 of the Code provides, in pertinent part, that no prescription for a
15 dangerous drug may be refilled except upon authorization of the prescriber.

16 11. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
17 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
18 to have in his or her possession a drug secured by a forged prescription.

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation of the licensing
21 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

22
23 DANGEROUS DRUGS

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

25 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
26 except veterinary drugs that are labeled as such, and includes the following:

27 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
28 prescription,' 'Rx only,' or words of similar import.

1 ...
2 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
3 prescription or furnished pursuant to Section 4006.”

4 14. **Soma** is a brand name for **carisoprodol**, a dangerous drug as designated by Business
5 and Professions Code section 4022. It is a muscle relaxant.

6
7 FACTUAL BACKGROUND

8 15. Between in or about 2003 and in or about 2009, Respondent was employed by one or
9 more Kaiser Foundation Hospital pharmacies in or around the San Francisco Bay Area, first as a
10 staff pharmacist until approximately October 2006, and then on a per diem basis.

11 16. During the tenure of her employment, Respondent used the access afforded by her
12 employment and licensure to divert/steal, or attempt to divert/steal, dangerous drugs, including
13 **Soma** and/or generic **carisoprodol**. The exact number of instances of diversion or attempted
14 diversion by Respondent, and the full quantity of drugs diverted or attempted to be diverted, are
15 not known, but in the course of the investigation(s) conducted by Kaiser and Board of Pharmacy
16 Inspector(s), the following were among the observations, admissions, and revelations reported:

17 a. In or about October 2009, Respondent was employed on a per diem basis in the
18 inpatient pharmacy at a Kaiser Foundation Hospital Inpatient/Outpatient Pharmacy (HSP 32670)
19 in South San Francisco, CA. On or about October 8, 2009, a date she was not scheduled to work
20 at Kaiser, Respondent entered the Kaiser outpatient pharmacy and, with slurred speech and other
21 signs of potential impairment by/influence of drugs or alcohol, attempted to divert/steal a bottle of
22 100 tablets of **Soma** or generic **carisoprodol** by asserting that she had been sent there by staff of
23 the inpatient pharmacy to transfer a bottle of **Soma/carisoprodol** to the inpatient pharmacy. This
24 was not true. Respondent subsequently admitted to being “very impaired” on this date.

25 b. Subsequent investigation showed that on dates in or around July and August
26 2009 that Respondent was working, three other bottles (100 tablets each) of **Soma/carisoprodol**
27 were taken from the outpatient pharmacy for “transfer” to the inpatient pharmacy, with no record
28 of receipt in the inpatient pharmacy, and no record of being dispensed in the inpatient pharmacy.

1 c. Respondent admitted to having a problem and being "out of control" with her
2 use and abuse of **Soma/carisoprodol**. Respondent admitted to developing an abusive pattern of
3 use of **Soma/carisoprodol** in and/or between 2000 and 2003, followed by a resumption of abuse
4 in or around 2005 that lasted through the above-described incident(s) in 2009.

5 d. On or about November 14, 2007, a physician gave Respondent a prescription
6 for **Soma/carisoprodol** (120 tablets). On or about November 27, 2007, Respondent returned to
7 that physician for a new prescription, claiming the previous one had been lost. She received a
8 new prescription for **Soma/carisoprodol** (120 tablets). No refills were authorized, but an attempt
9 was made to alter the prescription document to authorize six (6) refills. The pharmacy contacted
10 the prescriber and confirmed that no refills had been authorized. The prescriber told Respondent
11 he would no longer write any prescriptions for her, and placed an alert in her medical chart(s).

12
13 FIRST CAUSE FOR DISCIPLINE

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

15 17. Respondent is subject to discipline under section 4301(f) of the Code, in that
16 Respondent, as described in paragraphs 15 and 16 above, committed acts involving moral
17 turpitude, dishonesty, fraud, deceit, or corruption.

18 SECOND CAUSE FOR DISCIPLINE

19 (Creation/Signature of False Documents)

20 18. Respondent is subject to discipline under section 4301(g) of the Code in that
21 Respondent, as described in paragraphs 15 and 16 above, created and/or signed documents that
22 falsely represented the existence or nonexistence of a state of facts.

23 THIRD CAUSE FOR DISCIPLINE

24 (Dangerous or Injurious Self-Administration/Use of Dangerous Drug)

25 19. Respondent is subject to discipline under section 4301(h) of the Code, in that
26 Respondent, as described in paragraphs 15 and 16 above, self-administered and/or used one or
27 more dangerous drugs to the extent or in a manner dangerous or injurious to herself or another, or
28 to the extent that the use impaired her ability to conduct her pharmacy practice safely.

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FOURTH CAUSE FOR DISCIPLINE

(Furnishing of Dangerous Drug(s))

20. 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 15 and 16 above, furnished to herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, one or more dangerous drug(s).

FIFTH CAUSE FOR DISCIPLINE

(Unlawful Refills of Prescriptions)

21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4063 of the Code, in that Respondent, as described in paragraphs 15 and 16 above, refilled, conspired to refill, and/or assisted or abetted refilling of, an unauthorized refill of a prescription.

SIXTH CAUSE FOR DISCIPLINE

(Making, Uttering and/or Using False or Forged Prescriptions)

22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4324 of the Code, in that Respondent, as described in paragraphs 15 and 16 above, falsely made, altered, forged, uttered, published, passed, or attempted to pass, a prescription for a drug, and/or conspired and/or assisted in or abetted any of these acts.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

23. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 15 to 21 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:

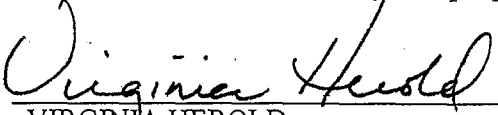
1. Revoking or suspending Pharmacist License Number RPH 53971, issued to Michelle Yee (Respondent);

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

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

DATED: 9/23/10



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

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