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

11  
12 In the Matter of the Accusation Against:

13 MYLES Y. SAWAI  
8105 E. Woodwind Avenue  
14 Orange, CA 92869

15 Pharmacist License No. RPH 41279

16 Respondent.

Case No. 3733

**A C C U S A T I O N**

17  
18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License  
24 Number RPH 41279 to Myles Y. Sawai (Respondent). The Pharmacist License was in full force  
25 and effect at all times relevant to the charges brought herein and will expire on July 31, 2011,  
26 unless renewed.

**JURISDICTION**

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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 unless otherwise indicated.

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

9           5.     Section 4300, subdivision (a) of the Code states in pertinent part, "every license  
10 issued may be suspended or revoked."

**STATUTORY PROVISIONS**

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12           6.     Section 4059 of the Code provides in part that a person may not furnish any  
13 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17           7.     Section 4060 of the Code states:

18                   No person shall possess any controlled substance, except that furnished to a  
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
22 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
23 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
24 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
25 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This  
26 section shall not apply to the possession of any controlled substance by a  
27 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
28 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

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

1 8. Section 4301 of the Code states:

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

5 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
6 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.

7 . . . .

8 (h) The administering to oneself, of any controlled substance, or the use of  
9 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
10 dangerous or injurious to oneself, to a person holding a license under this chapter,  
11 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.

12 . . . .

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

15 . . . .

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

20 . . . .

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

23 10. Health and Safety Code section 11173(a) provides that no person shall obtain or  
24 attempt to obtain controlled substances, or procure or attempt to procure the administration of or  
25 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
26 (2) by the concealment of a material fact.

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
3 the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6 **DRUG**

7 12. Fioricet, the brand name for butalbital with acetaminophen and caffeine, is a  
8 Schedule III controlled substance as designated by Health and Safety Code section 11056(c)(3),  
9 and is a dangerous drug pursuant to Business and Professions Code section 4022. Fioricet is used  
10 in the treatment of headaches and migraines.

11 **FACTUAL ALLEGATIONS**

12 13. Respondent was employed as a pharmacist at Kaiser Permanente Pharmacy in  
13 Riverside, California from August 14, 1989 through May 8, 2009. On or around January 30,  
14 2009, the Kaiser Internal Audit Team notified the Pharmacist-in-Charge ("PIC") of possible thefts  
15 of the drug, Fioricet, in the pharmacy. As a result, covert cameras were installed and an internal  
16 investigation ensued. The internal investigation revealed the following:

17 14. On February 2, 2009, the pharmacy inventory count reflected a count of 683  
18 tablets of Fioricet in the morning. No tablets of Fioricet were dispensed throughout that day. The  
19 inventory count that afternoon reflected a count of 683 tablets of Fioricet; therefore, there were no  
20 loss of tablets for that day.

21 15. On February 3, 2009, at 08:02:10/11, Respondent was captured on the surveillance  
22 cameras accessing the Fioricet inventory box. Respondent was the only person to access the  
23 tablet inventory box that day. According to the pharmacy report, no tablets of Fioricet were  
24 dispensed that day, however, the pharmacy inventory count reported 583 tablets of Fioricet, with  
25 a loss of 100 tablets that day.

26 16. From February 4, 2009 through April 5, 2009, Respondent took a leave-of-absence  
27 from work. Pharmacy reports indicate that there were no discrepancies for Fioricet during the  
28 time that Respondent was on leave.

1           17. On April 6, 2009, the pharmacy inventory count reflected a count of 388 tablets of  
2 Fioricet in the morning. No tablets were dispensed throughout the day. The inventory count  
3 reflected no loss of tablets for that day.

4           18. On April 7, 2009, at 20:22:40/41, Respondent was captured on the surveillance  
5 cameras removing a container (which appeared to be a patient container) from the Fioricet  
6 inventory box. At 20:23:22, Respondent returned that container to the Fioricet inventory box. At  
7 20:23:44, Respondent rearranged bottles in the inventory box and then removed another bottle  
8 from the inventory box. That second bottle was never returned to the inventory box. According  
9 to the pharmacy report, no tablets were dispensed that day, however, the pharmacy inventory  
10 count reported 328 tablets of Fioricet in the evening, with a loss of 50 tablets that day.

11           19. On April 19, 2009, the pharmacy inventory count reflected a count of 673 tablets of  
12 Fioricet in the evening, with no tablets dispensed throughout the day.

13           20. On April 20, 2009, at 06:24:27, Respondent was captured on the surveillance cameras  
14 accessing the Fioricet inventory box before the pharmacy opened at 0900 hours. Later that  
15 morning at 10:30 a.m., an order for 30 tablets of Fioricet was placed. The pharmacy inventory  
16 count reported 542 tablets in the evening; therefore, there was a loss of 100 tablets of Fioricet.

17           21. On or about May 5, 2009, Respondent met with the Kaiser Permanente investigators  
18 regarding the discrepancies in Fioricet, and was presented with the visual evidence and inventory  
19 data that illustrated the theft on the 3 separate occasions. Respondent was suspended that day and  
20 then later resigned on May 8, 2009, in lieu of termination.

21           22. On June 4, 2009, a Department of Consumer Affairs investigator sent Respondent a  
22 letter requesting a written statement from him. On June 22, 2009 the investigator received a letter  
23 from Respondent dated June 15, 2009, wherein Respondent admitted to the theft of the Fioricet  
24 on the three separate occasions at Kaiser Permanente. Respondent stated, "although I abused  
25 Fioricet and obtained them illegally, I want to state that I used it for personal use only."  
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27  
28

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Dishonesty and Deceit)

3 23. Respondent is subject to disciplinary action for unprofessional conduct under section  
4 4301(f) of the Code in that Respondent's theft constitutes dishonesty and deceit, as is detailed in  
5 paragraphs 13-22, incorporated herein by reference.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Self-Administration of a Controlled Substance)

8 24. Respondent is subject to disciplinary action for unprofessional conduct under section  
9 4301(h) of the Code in that he illegally administered a controlled substance to himself in violation  
10 of Health and Safety Code section 11170, as set forth in paragraphs 13-22, incorporated herein by  
11 reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – Violation of Chapter)

14 25. Respondent is subject to disciplinary action for unprofessional conduct under section  
15 4301(o) of the Code in that he violated the Pharmacy Act by furnishing a dangerous drug to  
16 himself in violation of Code section 4059, and illegally possessing a controlled substance in  
17 violation of Code section 4060, and by violating Health and Safety Code section 11173, as  
18 evidenced by his admissions as set forth in paragraphs 13-22 above, incorporated herein by  
19 reference.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

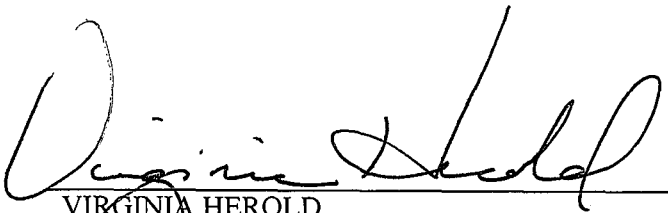
22 26. Respondent is subject to disciplinary action for unprofessional conduct under section  
23 4301(j) of the Code in that he violated the California Uniform Controlled Substances Act (Health  
24 and Safety Code Sections 11000, et. seq.), as evidenced by his admissions as set forth in  
25 paragraphs 13-22 above, incorporated herein by reference.

26 **PRAYER**

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

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1. Revoking or suspending Pharmacist License Number RPH 41279, issued to Myles Y. Sawai
2. Ordering Myles Y. Sawai to pay the Board of Pharmacy 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 deemed necessary and proper.

DATED: 7/19/10 \_\_\_\_\_   
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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