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

11 In the Matter of the Accusation Against:

Case No. 3761

12 **FED-RX PHARMACY**  
13 **4002 30th Street**  
14 **San Diego, CA 92104**

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

15 **Permit No. PHY 39339**

16 **DANIEL INBONG LEE**  
17 **4002 30th Street**  
**San Diego, CA 92104**

18 **Pharmacist License No. RPH 42633**

19 Respondent.

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21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about May 21, 1993, the Board of Pharmacy issued Pharmacy Permit Number  
26 PHY 39339 to Daniel Inbong Lee dba Fed-Rx Pharmacy (Respondent Pharmacy). The Pharmacy  
27 Permit was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on May 1, 2011, unless renewed.

1 3. On or about August 4, 1989, the Board of Pharmacy issued Pharmacist License  
 2 Number RPH 42633 to Daniel Inbong Lee (Respondent Lee). Daniel Inbong Lee has been the  
 3 Individual License owner and the Pharmacist-in-Charge of Fed-Rx Pharmacy since May 21,  
 4 1993. The Pharmacist License was in full force and effect at all times relevant to the charges  
 5 brought herein and will expire on October 31, 2010, unless renewed.

6 **JURISDICTION**

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

10 5. Section 4300 of the Code states, in pertinent part:

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

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

14 (1) Suspending judgment.

(2) Placing him or her upon probation.

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

16 (4) Revoking his or her license.

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

18 . . . .

(e) The proceedings under this article shall be conducted in accordance with  
 19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
 Government Code, and the board shall have all the powers granted therein. The  
 20 action shall be final, except that the propriety of the action is subject to review by  
 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.  
 21

22 6. Section 4032 defines "license" to include any license, permit, registration, certificate  
 23 or exemption issued by the Board.

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

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STATUTORY PROVISIONS

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2 8. Section 4301 of the Code states, in pertinent part:

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

6 .....

(d) The clearly excessive furnishing of controlled substances in violation of  
subdivision (a) of Section 11153 of the Health and Safety Code.

7 .....

8 (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.

9 .....

10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
11 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  
12 pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency.

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14 9. Section 4113 (b) of the Code provides that the pharmacist-in-charge shall be  
15 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining  
16 to the practice of pharmacy.

17 10. Health & Safety Code section 11153, states, in pertinent part:

18 (a) A prescription for a controlled substance shall only be issued for a  
19 legitimate medical purpose by an individual practitioner acting in the usual course  
20 of his or her professional practice. The responsibility for the proper prescribing  
and dispensing of controlled substances is upon the prescribing practitioner, but a  
21 corresponding responsibility rests with the pharmacist who fills the prescription.  
Except as authorized by this division, the following are not legal prescriptions: (1)  
22 an order purporting to be a prescription which is issued not in the usual course of  
professional treatment or in legitimate and authorized research; or (2) an order for  
23 an addict or habitual user of controlled substances, which is issued not in the  
course of professional treatment or as part of an authorized narcotic treatment  
24 program, for the purpose of providing the user with controlled substances,  
sufficient to keep him or her comfortable by maintaining customary use.

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**REGULATORY PROVISIONS**

11. Title 16, California Code of Regulations (CCR), section 1761 states:

(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

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**COST RECOVERY**

12. Section 125.3 of the Code states, 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.

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**DRUGS**

13. **Oxycodone**, also sold under the brand name **OxyContin**, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.

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**FACTS**

14. On or about February 17, 2009, Cardinal Health, a prescription drug supplier, notified Respondent Pharmacy, the Board and the DEA that they were suspending sales of controlled substances to Respondent Pharmacy because their controlled substances sales created an unreasonable risk for potential diversion. Respondent Pharmacy could not adequately justify controlled substances sales quantities.

15. In or about 2008, Respondent Lee entered into an arrangement with Dr. S.V., a dentist, to fill OxyContin prescriptions for patients of Dr. S.V. The usual arrangement was that Dr. S.V. would phone Respondent Pharmacy with the order for the drug, and then the following day the office manager for Dr. S.V. would bring the patients' prescriptions to Respondent Pharmacy, wait for the prescription to be prepared, pay cash for the drugs and take them with him.

1           16. Respondent Lee did not have a relationship with the patients of Dr. S.V. Respondent  
2 Lee never saw or spoke with the patients. Respondent Lee never had a diagnosis for the patients  
3 and he had no proof the patients ever received their medication.

4           17. With the exception of the names and addresses of the patients, all of the prescriptions  
5 were identical, in that each prescription was for 180 tablets of OxyContin with a dosage of 80  
6 mgs.

7           18. Between April 28, 2008 and September 16, 2009 Respondent Pharmacy filled 138  
8 prescriptions written by Dr. S.V. for 63 patients for a total of 24,840 tablets of OxyContin with  
9 an estimated street value of \$1,987,200.00.

10   **FIRST CAUSE FOR DISCIPLINE**

11   **(Unprofessional Conduct: Violating State Law Governing Pharmacy)**

12           19. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action  
13 under Code section 4301, subdivision (o), for violating state law governing pharmacy.  
14 Respondents failed to comply with Health and Safety Code section 11153 (a) and title 16,  
15 California Code of Regulations, section 1761, which state that a pharmacist shall not dispense a  
16 prescription containing an irregularity or uncertainty, and that a pharmacist has a corresponding  
17 responsibility to ensure proper prescribing and dispensing.

18           20. An audit of the pharmacy's records by the Board's inspector for the period April 28,  
19 2008 through September 16, 2009, revealed that Respondents dispensed prescriptions that  
20 contained significant irregularities and uncertainties, as more particularly described in paragraphs  
21 14 through 18, above.

22   **SECOND CAUSE FOR DISCIPLINE**

23   **(Unprofessional Conduct: Violating State Law Regulating Controlled Substances)**

24           21. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action  
25 under Code section 4301, subdivision (j), for violating state law regulating controlled substances.  
26 Respondents failed to comply with Health and Safety Code section 11153 (a), by failing to  
27 determine if the prescriptions for the OxyContin were to be used for a legitimate medical purpose,  
28 as more particularly described in paragraphs 14 through 18, above.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Excessive Furnishing of Controlled Substances)**

3 22. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action  
4 under Code section 4301, subdivision (d), for the clearly excessive furnishing of controlled  
5 substances in violation of Health and Safety Code section 11153 (a), by dispensing 24,840 tablets  
6 of OxyContin on prescriptions from one dentist, as more particularly described in paragraphs 14  
7 through 18, above.

8 **DISCIPLINE CONSIDERATIONS**

9 23. To determine the degree of discipline, if any, to be imposed on Respondent Fed-Rx  
10 Pharmacy and Respondent Lee, Complainant alleges that on or about April 28, 2004, in a prior  
11 action, the Board of Pharmacy issued Citation Number CI 2003-26183 to Respondent Fed-Rx  
12 Pharmacy and Citation Number CI 2003-26672 to Respondent Lee and ordered Respondent Fed-  
13 Rx Pharmacy to pay a fine of \$1,250.00 and ordered Respondent Lee to pay a fine of \$750.00.

14 24. The Citations were for the following violations:

15 (a) Section 4125 and 16 CCR 1711, for failing to establish a Quality Assurance  
16 program to assess medication errors;

17 (b) 16 CCR 1715, for failing to have a current Pharmacy Self-Assessment form on  
18 file in the pharmacy;

19 (c) Title 21, Code of Federal Regulations, section 1304.11, for failing to have a  
20 biennial inventory of all controlled substances;

21 (d) 16 CCR 1715.5, for failing to transmit California Utilization Review and  
22 Evaluation System (CURES) data as required.

23 Those Citations are now final and are incorporated by reference as if fully set forth.

24 **PRAYER**

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

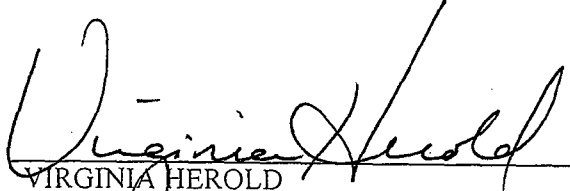
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1. Revoking or suspending Permit Number PHY 39339, issued to Fed-Rx Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 42633, issued to Daniel Inbong Lee;
3. Ordering Fed-Rx Pharmacy and Daniel Inbong Lee to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: 8/4/10

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

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