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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3884

11 **CLAYTON EUGENE WHEELER**  
12 **326 Lorraine Court**  
13 **Sebastopol, CA 95472**

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

14 **Pharmacist License No. RPH 28905**

15 Respondent.

16 Complainant alleges:

17  
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 July 17, 1990, the Board of Pharmacy issued Pharmacist License No.  
22 RPH 28905 to Clayton Eugene Wheeler (Respondent). The License was in full force and effect at  
23 all times relevant to the charges herein and will expire on March 31, 2012, 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 (Code) unless otherwise indicated.

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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 15. **Cheratussin AC** and **Robitussin AC** are among the brand names for a compound of  
5 the expectorant guaifenesin and **codeine**, a Schedule V controlled substance as designated by  
6 Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and  
7 Professions Code section 4022. These are also known generically as **Guaifenesin with Codeine**.  
8 These combinations are an expectorant cough syrup, and a narcotic analgesic.

9 16. **Percocet** and **Endocet** are among the brand names for a compound of acetaminophen  
10 (APAP) and **oxycodone**, a Schedule II controlled substance as designated by Health and Safety  
11 Code section 11055(b)(1)(N) and a dangerous drug as designated by Business and Professions  
12 Code section 4022. These are also known as **Oxycodone with APAP**. These are narcotic drugs.

13 FACTUAL BACKGROUND

14 17. From an unknown start date until on or about March 30, 2010, Respondent worked as  
15 a pharmacist for a Kaiser Pharmacy (PHY 46492) located in Santa Rosa, CA. For at least part of  
16 that time, and until on or about March 30, 2010, Respondent served as pharmacist in charge. As  
17 such, Respondent had access to the stock of controlled substances and dangerous drugs.

18 18. During the tenure of his employment, Respondent used his access to divert/steal  
19 controlled substances and dangerous drugs, including **Guaifenesin with Codeine**.

20 19. The exact number of instances of diversion/theft by Respondent, and the full quantity  
21 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in  
22 the course of investigations by Kaiser and by the Board, the following were reported:

23 a. An audit/investigation of controlled substance/dangerous drug inventory and  
24 stock on hand by Kaiser auditors/investigators determined that between in or around May 2009  
25 and March 2010 the Kaiser Pharmacy by which Respondent was employed showed a shortage of  
26 **Guaifenesin with Codeine** cough syrup product(s) of approximately 30,863 mls.

27 b. Covert video footage showed Respondent engaged in suspicious activity with  
28 regard to the supplies of **Guaifenesin with Codeine** in the pharmacy, including after hours.

1 c. On unknown dates in or around February or March 2010, an empty bottle of  
2 **Guaifenesin with Codeine** from pharmacy stock was found in a waste basket in the pharmacy,  
3 and an unlabeled bottle from pharmacy stock containing 97 tablets of **Oxycodone with APAP**  
4 was found in an unlocked desk drawer in a desk used by Respondent.

5 d. Respondent told Kaiser auditor/investigators and Board Inspector(s) that he was  
6 not involved in drug diversion/theft or self-use, that the video footage of his activities with regard  
7 to **Guaifenesin with Codeine** was because of his own after-hours investigation of possible theft  
8 or diversion by other employee(s), and that he put the **Oxycodone with APAP** in his desk drawer  
9 after he found it elsewhere in the pharmacy premises and/or it was returned by a customer.

10 e. On or about April 12, 2010, Kaiser filed a Report of Theft or Loss of Controlled  
11 Substances (DEA Form 106) with the Drug Enforcement Administration, in which Kaiser  
12 reported losses due to employee pilferage of 129 bottles (236 mls per bottle, total of 30,844 mls)  
13 of **Cheratussin AC (Guaifenesin with Codeine)** and 97 tablets of **Oxycodone with APAP**.

14 g. Respondent subsequently admitted to Board Inspector(s) that he had a problem  
15 with **Robitussin AC (Guaifenesin with Codeine)**, and that he had diverted same from Kaiser  
16 drug stock (for self-use). Respondent reported seeking treatment/counseling for his problem.

17  
18 FIRST CAUSE FOR DISCIPLINE

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

20 20. Respondent is subject to discipline under section 4301(f) of the Code in that  
21 Respondent, as described in paragraphs 17 to 19 above, committed numerous acts involving  
22 moral turpitude, dishonesty, fraud, deceit, or corruption.

23  
24 SECOND CAUSE FOR DISCIPLINE

25 (Self-Administration of Controlled Substance and/or Alcohol)

26 21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)  
27 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as  
28 described in paragraphs 17 to 19 above, administered a controlled substance to himself.

1 THIRD CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described  
5 in paragraphs 17 to 19 above, furnished to himself or another without a valid prescription, and/or  
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7  
8 FOURTH CAUSE FOR DISCIPLINE

9 (Possession of Controlled Substance)

10 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
11 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
12 in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted  
13 possession of, a controlled substance, without a prescription.

14  
15 FIFTH CAUSE FOR DISCIPLINE

16 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

17 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
18 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
19 17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
20 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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22 SIXTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 25. Respondent is subject to discipline under section 4301 of the Code in that  
25 Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.

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1 DISCIPLINE CONSIDERATIONS

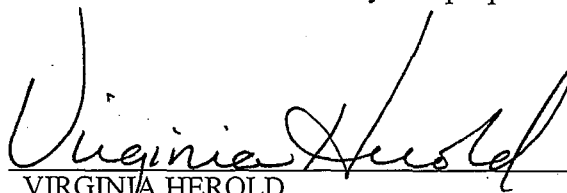
2 26. To determine the appropriate level of discipline, if any, to be imposed on Respondent,  
3 Complainant further alleges that on or about February 2, 2002, in a prior disciplinary action titled  
4 *In the Matter of the Accusation against Jerry E. Dannenberg, et al.*, Case No. 2243 before the  
5 Board of Pharmacy, Respondent's License was subjected to prior discipline. By a Decision and  
6 Order of the Board adopting a Stipulated Settlement, effective February 2, 2002, Respondent was  
7 issued a letter of public reprimand on the basis of allegations that Respondent gave up his right to  
8 contest, including that in his role as pharmacist in charge (PIC) of a Kaiser pharmacy, Respondent  
9 failed to keep and maintain a complete and accurate inventory of controlled substances in stock in  
10 the pharmacy (and so failed to detect a pattern of diversion and self-use by another pharmacist),  
11 and also failed to timely notify the appropriate authorities upon discovery of the diversion. That  
12 decision is now final and is incorporated by reference as if fully set forth herein.

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14 PRAYER

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

- 17 1. Revoking or suspending Pharmacist License Number RPH, issued to Clayton Eugene  
18 Wheeler (Respondent);  
19 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
20 enforcement of this case, pursuant to Business and Professions Code section 125.3;  
21 3. Taking such other and further action as is deemed necessary and proper.

22  
23  
24 DATED: 4/5/11

  
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
*Complainant*

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