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

12 In the Matter of the Accusation Against:

Case No. 3929

13 **HOWARD HONG WAH WONG**
14 **1560 Walnut Leaf Drive**
15 **Walnut, CA 91789**
16 **Original Pharmacist License No. RPH 56561**

A C C U S A T I O N

Respondent.

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 November 8, 2004, the Board of Pharmacy issued Original Pharmacist
22 License Number RPH 56561 to Howard Hong Wah Wong (Respondent). The Original
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on July 31, 2012, unless renewed.

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 unless otherwise indicated.

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

5 5. Section 4300 of the Code states:

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

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

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

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

13 "(4) Revoking his or her license.

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

16 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
17 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
18 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
19 may issue the license subject to any terms or conditions not contrary to public policy, including,
20 but not limited to, the following:

21 "(1) Medical or psychiatric evaluation.

22 "(2) Continuing medical or psychiatric treatment.

23 "(3) Restriction of type or circumstances of practice.

24 "(4) Continuing participation in a board-approved rehabilitation program.

25 "(5) Abstention from the use of alcohol or drugs.

26 "(6) Random fluid testing for alcohol or drugs.

27 "(7) Compliance with laws and regulations governing the practice of pharmacy.

28

1 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
2 certificate of licensure for any violation of the terms and conditions of probation. Upon
3 satisfactory completion of probation, the board shall convert the probationary certificate to a
4 regular certificate, free of conditions.

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

10 6. Section 4022 of the Code states: "Dangerous drug" or "dangerous device" means
11 any drug or device unsafe for self-use in humans or animals, and includes the following:

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

14 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
15 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
16 in with the designation of the practitioner licensed to use or order use of the device.

17 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
18 prescription or furnished pursuant to Section 4006."

19 7. Section 4059 of the Code states:

20 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
21 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
22 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
23 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
24 3640.7."

25 8. Section 4060 of the Code states: "No person shall possess any controlled substance,
26 except that furnished to a person upon the prescription of a physician, dentist, podiatrist,
27 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
28 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse

1 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
2 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph
3 (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
4 Section 4052. This section shall not apply to the possession of any controlled substance by a
5 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
6 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
7 assistant, when in stock in containers correctly labeled with the name and address of the supplier
8 or producer.

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

12 9. Section 4301 of the Code states: "The board shall take action against any holder of a
13 license who is guilty of unprofessional conduct or whose license has been procured by fraud or
14 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited
15 to, any of the following:

16

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

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

26 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
27 administering or offering to sell, furnish, give away, or administer any controlled substance to an
28 addict.

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

3

4 (p) Actions or conduct that would have warranted denial of a license.”

5 10. 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 his license or registration in a manner
11 consistent with the public health, safety, or welfare."

12 11. Health and Safety Code section 11351, states: "Except as otherwise provided in this
13 division, every person who possesses for sale or purchases for purposes of sale (1) any controlled
14 substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14),
15 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
16 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified
17 in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment in the state
18 prison for two, three, or four years."

19 12. Health and Safety Code section 11158, states:

20 “(a) Except as provided in Section 11159 or in subdivision (b) of this section, no
21 controlled substance classified in Schedule II shall be dispensed without a prescription meeting
22 the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly
23 to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance
24 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the
25 requirements of this chapter.”

26 13. Health and Safety Code section 11171 provides that no person shall prescribe,
27 administer, or furnish a controlled substance except under the conditions and in the manner
28 provided by this division.

1 Code section 11173(a) in that Respondent obtained controlled substance(s) and/or dangerous
2 drug(s) by fraud, deceit, and subterfuge. The circumstances are as follows:

3 a. Specifically, Respondent admitted that from at least March 2009 to January 2010,
4 Respondent obtained at least 720 tablets of Hydrocodone/APAP 5-500 and 340 tablets of
5 Hydrocodone/APAP 10-325, both controlled substances, by fraudulent and deceitful acts while
6 employed by CVS Pharmacy #5775, located at 3151 Baldwin Park Blvd., Baldwin Park, CA
7 91706.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Furnishing Drugs without a Prescription)

10 20. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
11 subdivision (f) and (j), on the grounds of unprofessional conduct, for violating section 4059,
12 subdivision (a); in conjunction with Health and Safety code sections 11158, subdivision (a), and
13 11171, in that from at least March 2009 to January 2010, Respondent furnished a controlled
14 substance, Hydrocodone/APAP 5-500 and Hydrocodone/APAP 10-325, both controlled
15 substances, without a legitimate prescription to an unknown individual, as more fully set forth in
16 the preceding paragraph 19, inclusive.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Possession of a Narcotic Controlled Substance for Sale)

19 21. Respondent is subject to disciplinary action under Code sections 4300, subdivision
20 (f), on the grounds of unprofessional conduct, for violating section 4059, subdivision (a); in
21 conjunction with Health and Safety Code section 11351, in that during the period of March 2009
22 to January 2010, Respondent possessed and sold to an unknown individual for \$10 each drug
23 without a prescription, at least 720 tablets of Hydrocodone/APAP 5-500 and 340 tablets of
24 Hydrocodone/APAP 10-325, both Schedule III controlled substances. These drugs were
25 unlawfully removed and possessed by Respondent without a legitimate prescription, as more fully
26 set forth in the preceding paragraph 19, inclusive.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Corrupt Acts – Stealing Merchandise)

3 22. Respondent is subject to disciplinary action under Code section 490 and 4301,
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, on the
5 grounds of unprofessional conduct. Respondent engaged in unprofessional conduct in that he
6 conducted acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
7 circumstances are as follows:

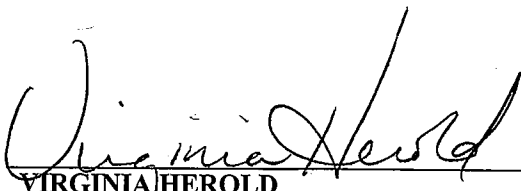
8 a. Between March 2009 to January 2010, Respondent stole gift cards from CVS
9 Pharmacy in the amount of \$875. Respondent admitted that he activated approximately eight (8)
10 gift cards without a prescription and used them to buy merchandise while he was employed at
11 CVS Pharmacy #5775, located at 3151 Baldwin Park Blvd., Baldwin Park, CA 91706.

12 **PRAYER**

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

- 15 1. Revoking or suspending Original Pharmacist License Number RPH 56561, issued to
16 Respondent Howard Hong Wah Wong.
- 17 2. Ordering Respondent Howard Hong Wah Wong to pay the Board of Pharmacy the
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.
- 21
- 22

23 DATED: 5/9/11

24 
25 **VIRGINIA HEROLD**
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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