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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. 4107

11 **STEPHEN F. LEE**
12 **1512 California Street, Apt. 3**
13 **San Francisco, CA 94109**

ACCUSATION

14 **Pharmacist License No. RPH 48797**

15 Respondent.

16 Complainant alleges:

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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 13, 1996, the Board of Pharmacy issued Pharmacist License No.
22 RPH 48797 to Stephen F. Lee (Respondent). The License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on January 31, 2014, 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 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. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

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

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

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

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished upon a valid prescription/drug order.

12 11. Section 4063 of the Code provides, in pertinent part, that no prescription for any
13 dangerous drug or dangerous device may be refilled except upon authorization of the prescriber.

14 12. Section 4064 of the Code provides, in pertinent part, that a prescription for a
15 dangerous drug or dangerous device may be refilled without the prescriber’s authorization if the
16 prescriber is unavailable to authorize the refill and if, in the pharmacist’s professional judgment,
17 failure to refill the prescription might interrupt the patients ongoing care and have a significant
18 adverse effect on the patient’s well-being. However, the pharmacist must inform both the patient
19 and the prescriber that the prescription was refilled pursuant to this section, must first have made
20 every reasonable effort to contact the prescriber, and must an adequate record of this exception.

21 13. Health and Safety Code section 11201 provides, in pertinent part, that a prescription
22 for a Schedule III, IV, or V controlled substance may be refilled without the prescriber’s
23 authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist’s
24 professional judgment, failure to refill the prescription might present an immediate hazard to the
25 patient’s health and welfare or might result in intense suffering. However, the pharmacist may
26 refill only an amount sufficient to maintain the patient until the prescriber can be contacted, must
27 keep specified records of the emergency refill, must inform both the patient and the prescriber of
28 the emergency refill, and must first have made every reasonable effort to contact the prescriber.

1 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 15. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
5 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health
6 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

7 16. Health and Safety Code section 11352, in pertinent part, makes it unlawful to offer to,
8 attempt to, or transport, import, sell, furnish, administer, or give away, any controlled substance
9 classified in Schedule III, IV, or V which is a narcotic drug, without a valid prescription.

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

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 18. Section 4021 of the Code states:

15 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code.”

17 19. Section 4022 of the Code states, in pertinent part:

18 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
19 except veterinary drugs that are labeled as such, and includes the following:

20 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
21 prescription,’ ‘Rx only,’ or words of similar import.

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

24 20. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
25 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
26 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
27 drug as designated by Business and Professions Code section 4022. The varying compounds are
28 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

1 FACTUAL BACKGROUND

2 21. From an unknown start date until on or about September 16, 2010, Respondent was
3 employed as a staff pharmacist at a Costco Pharmacy (# 144) in San Francisco, CA (PHY 41120),
4 where by virtue of his licensure he had access to controlled substances and dangerous drugs.

5 22. On at least two occasions, in or about June 2009 and July 2009, exact dates unknown,
6 Respondent engaged in transactions with a co-worker, T.B.,¹ during which Respondent furnished
7 generic **Vicodin (Hydrocodone with APAP)** tablets to T.B. that Respondent said had come from
8 prescriptions dispensed or furnished to Respondent's girlfriend. On each occasion, Respondent
9 furnished approximately one hundred (100) to one hundred twenty (120) to T.B., in exchange for
10 which Respondent received \$200.00 in cash in an envelope from T.B.

11 23. On at least four and on up to as many as eight occasions, including but not limited to
12 on or about February 3, May 15, July 5, and August 2, 2010, Respondent furnished between eight
13 (8) and twenty (20) tablets of generic **Vicodin (Hydrocodone with APAP)** to T.B. in the absence
14 of a valid prescription or refill, and/or without the prescriber's authorization. Respondent stated
15 that on these occasions he was "advancing" generic **Vicodin (Hydrocodone with APAP)** to T.B.
16 in anticipation of upcoming prescriptions, refills, and/or prescriber authorizations. On none of
17 these occasions did Respondent contact the prescriber(s) or otherwise comply with the emergency
18 refill requirements stated in section 4064 of the Code or Health and Safety Code section 11201.

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21 FIRST CAUSE FOR DISCIPLINE

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

23 24. Respondent is subject to discipline under section 4301(f) of the Code, in that
24 Respondent, as described in paragraphs 21 to 23 above, committed acts involving moral
25 turpitude, dishonesty, fraud, deceit, or corruption.

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28 ¹ The full name will be revealed during the discovery process.

1 SECOND CAUSE FOR DISCIPLINE

2 (Furnishing of Dangerous Drug(s))

3 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, in that Respondent, as described in paragraphs 21 to 23 above, furnished to
5 himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
6 abetted furnishing of, one or more dangerous drug(s).

7 THIRD CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substance(s))

9 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
11 in paragraphs 21 to 23 above, possessed, conspired to possess, and/or assisted in or abetted
12 possession of, a controlled substance, without a prescription.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Furnishing Refill without Prescriber Authorization)

15 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
16 4063 of the Code, by reference to section 4064 of the Code and/or Health and Safety Code
17 section 11201, in that Respondent, as described in paragraphs 21 to 23 above, furnished,
18 conspired to furnish, and/or assisted in or abetted the furnishing of a refill of a dangerous drug
19 and/or a controlled substance, where that refill was not authorized by the prescriber, and did not
20 do so pursuant to the requirements of the emergency refill provision(s).

21 FIFTH CAUSE FOR DISCIPLINE

22 (Possession or Purchase of Controlled Substance(s) for Sale)

23 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 21
25 to 23 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or
26 assisted in or abetted the possession or purchase for sale, of a controlled substance.

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SIXTH CAUSE FOR DISCIPLINE

(Transporting, Selling, or Giving Away Controlled Substance)

29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11352, in that Respondent, as described in paragraphs 21 to 23 above, transported, imported, sold, furnished, administered, or gave away, or offered, attempted, conspired, and/or assisted/abetted any of these actions, as to a controlled substance.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

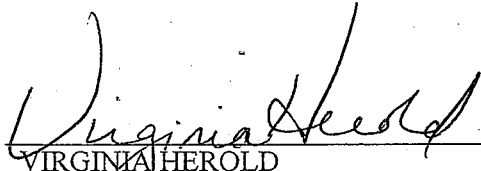
30. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 21 to 29 above, engaged in unprofessional conduct.

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 No. RPH 48797, issued to Stephen F. Lee (Respondent);
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: 3/24/12


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

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