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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. 4191

11 **DEMI RX PHARMACY; LEONARD**
12 **FRAYMAN**
13 **2052 N. Lake Ave**
Altadena, CA 91001
14 **Permit No. PHY 45319**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy.
- 21 2. On or about May 30, 2001, the Board issued Permit Number PHY 45319 to Leonard
22 Frayman, dba Demi Rx Pharmacy (Respondent). The Permit was in full force and effect at all
23 times relevant to the charges brought herein and will expire on May 1, 2012, unless renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board, under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 27 4. Section 4300 of the Code states:
- 28 "(a) Every license issued may be suspended or revoked.

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

4 "(1) Suspending judgment.

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

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

7 "(4) Revoking his or her license.

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

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

15 "(1) Medical or psychiatric evaluation.

16 "(2) Continuing medical or psychiatric treatment.

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

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

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

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

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

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

26 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
27 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
28 shall have all the powers granted therein. The action shall be final, except that the propriety of

1 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
2 Civil Procedure."

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

7 6. Section 4301 of the Code states:

8 "The board shall take action against any holder of a license who is guilty of unprofessional
9 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

10 Unprofessional conduct shall include, but is not limited to, any of the following:

11 "(a) Gross immorality.

12 "(b) Incompetence.

13 "(c) Gross negligence.

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

16 "(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
17 of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining
18 whether the furnishing of controlled substances is clearly excessive shall include, but not be
19 limited to, the amount of controlled substances furnished, the previous ordering pattern of the
20 customer (including size and frequency of orders), the type and size of the customer, and where
21 and to whom the customer distributes its product.

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

25 "(g) Knowingly making or signing any certificate or other document that falsely represents
26 the existence or nonexistence of a state of facts.

27 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

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

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

9 "(k) The conviction of more than one misdemeanor or any felony involving the use,
10 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
11 combination of those substances.

12 "(l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
22 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
23 of this provision. The board may take action when the time for appeal has elapsed, or the
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
28 indictment.

1 "(m) The cash compromise of a charge of violation of Chapter 13 (commencing with
2 Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter
3 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code
4 relating to the Medi-Cal program. The record of the compromise is conclusive evidence of
5 unprofessional conduct.

6 "(n) The revocation, suspension, or other discipline by another state of a license to practice
7 pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

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

12 "(p) Actions or conduct that would have warranted denial of a license.

13 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
14 board.

15 "(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section
16 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should
17 have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a)
18 of Section 256b of Title 42 of the United States Code.

19 "(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that
20 primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to
21 be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall
22 include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that
23 primarily or solely dispenses prescription drugs to patients of long-term care facilities, the
24 previous ordering pattern of the pharmacy, and the general patient population to whom the
25 pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a
26 tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be
27 considered in determining whether there has been a violation of this subdivision. This provision
28 shall not be interpreted to require a wholesaler to obtain personal medical information or be

1 authorized to permit a wholesaler to have access to personal medical information except as
2 otherwise authorized by Section 56 and following of the Civil Code. "

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

7 8. Section 125.3 of the Code provides, in pertinent part, that the
8 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
9 have committed a violation or violations of the licensing act to pay a sum not to exceed the
10 reasonable costs of the investigation and enforcement of the case.

11 9. Section 22 of the Code states:

12 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
13 administration of the provision is vested, and unless otherwise expressly provided, shall include
14 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
15 'agency.'

16 CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 10. Respondent is subject to disciplinary action under section 4301, in that he engaged in
19 unprofessional conduct by making false and fraudulent statements to the Board in obtaining
20 licensure. The circumstances are as follows:

21 11. On or about March 28, 2011, Respondent Frayman submitted a Pharmacy Permit
22 Application with the Board of Pharmacy, naming "Demi Rx Pharmacy" as the intended name of
23 the business to be licensed.

24 12. On page 2 of the Application, Respondent responded "No" to the following question:

25 "Have you as an owner, shareholder, officer, member, director or partner . . . been involved
26 with a pharmacy . . . whose license has been disciplined . . . by a state board of pharmacy or
27 federal regulatory agency? Also describe if any of the above actions have involved your spouse .
28 . . ."

1 13. On page 2 of the Application, Respondent responded "No" to the following question:
2 "Are you currently, or have you previously been, associated in business with any person,
3 partnership, corporation, or other entity, or shared a financial or community property interest with
4 any person whose pharmacy permit . . . was denied, suspended, revoked, or placed on probation
5 or other disciplinary action taken, by this or any other governmental authority . . .?"

6 14. At the time respondent submitted the Application to the Board, he was married to
7 Zina Frayman, a previous pharmacy owner whose pharmacies were revoked by the Board for
8 Medi-Cal and insurance fraud.

9 15. On the Application, Respondent listed his home address as 717 High Lane, Redondo
10 Beach, California.

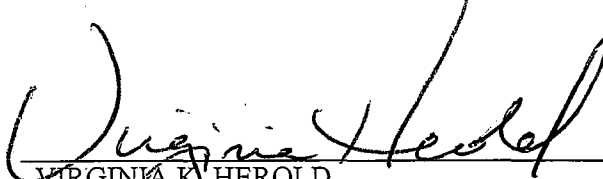
11 16. Shortly before Respondent submitted the Application with the Redondo Beach address,
12 his wife, Zina Frayman, issued a Quit Claim Deed (2001-0164583) transferring ownership of this
13 home to be the sole property of Respondent. This action was an attempt to conceal the fact that
14 Respondent's wife had previous disciplinary actions with the Board and to subvert any Board
15 investigation.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board issue a decision:

- 19 1. Revoking or suspending Permit Number PHY 45319, issued to Demi Rx Pharmacy;
20 2. Ordering Leonard Frayman to pay the Board the reasonable costs of the investigation
21 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
22 3. Taking such other and further action as deemed necessary and proper.

23
24
25 DATED: 5/30/12


26 VIRGINIA K. HEROLD
27 Executive Officer
28 Board of Pharmacy
State of California
Complainant

LA2011505272