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

11 In the Matter of the Accusation Against:  
12 **J Chris Mitsuoka**  
13 361 Panay Street  
Morro Bay, California 93442  
14  
15 **Pharmacist License No. RPH 28914**  
16 Respondent.

Case No. 4335

**ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about July 17, 1974, the Board of Pharmacy (Board), Department of Consumer  
23 Affairs issued Pharmacist License Number RPH 28914 to J. Chris Mitsuoka (Respondent). The  
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on August 31, 2013, unless renewed.

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1 **JURISDICTION**

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

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

9 5. Code section 4304 states that “[t]he board may deny, revoke, or suspend any license  
10 issued pursuant to Section 4161 for any violation of this chapter or for any violation of Part 5  
11 (commencing with Section 109875) of Division 104 of the Health and Safety Code.”

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13 **STATUTORY PROVISIONS**

14 6. Code section 4301 states in relevant part, that:

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

19 (b) Incompetence

20 (c) Gross Negligence

21 ....

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

24 ....

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

7. Section 4059 of the Code states:

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

1 dangerous device, except upon the prescription of a physician, dentist, podiatrist,  
2 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

3 8. Section 4059.5 of the Code states, in part:

4 (a) Except as otherwise provided in this chapter, dangerous drugs or  
5 dangerous devices may only be ordered by an entity licensed by the board and shall  
6 be delivered to the licensed premises and signed for and received by a pharmacist.  
7 Where a licensee is permitted to operate through a designated representative the  
8 designated representative shall sign for and receive the delivery.

9 (b) A dangerous drug or dangerous device transferred, sold, or delivered  
10 to a person within this state shall be transferred, sold, or delivered only to an entity  
11 licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's  
12 agent.

13 9. Section 4126.5 of the Code states, in part:

14 (a) A pharmacy may furnish dangerous drugs only to the following:

15 (1) A wholesaler owned or under common control by the wholesaler from  
16 whom the dangerous drug was acquired.

17 (2) The pharmaceutical manufacturer from whom the dangerous drug was  
18 acquired.

19 (3) A licensed wholesaler acting as a reverse distributor.

20 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a  
21 dangerous drug that could result in the denial of the health care. A pharmacy  
22 furnishing dangerous pursuant to this paragraph may only furnish a quantity sufficient  
23 to alleviate the temporary shortage.

24 (5) A patient or to another pharmacy pursuant to a prescription or as  
25 otherwise authorized by law.

26 (6) A health care provider that is not a pharmacy but is authorized to  
27 purchase dangerous drugs.

28 (7) To another pharmacy under common control.

10. Section 4160 of the Code states that (a) a person may not act as a wholesaler of any  
dangerous drug or dangerous device unless he or she has obtained a license from the board.

11. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe  
for self-use in humans or animals, and includes the following:

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

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

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

5 12. Section 4043 of the Code states:

6 (a) "Wholesaler" means and includes a person who acts as a wholesale  
7 merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident  
8 wholesaler, who sells for resale, or negotiates for distribution, or takes possession of,  
any drug or device included in Section 4022. Unless otherwise authorized by law, a  
wholesaler may not store, warehouse, or authorize the storage or warehousing of  
drugs with any person or at any location not licensed by the board.

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unlawful Furnishing of Dangerous Drugs and Controlled Substances)**

16 *Pharmacy Law Violations*

17 14. Respondent has subjected his license to disciplinary action under Code section 4301,  
18 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated the laws  
19 and provisions of the Code regulating dangerous drugs and controlled substances as set forth in  
20 section 4059, subdivision (a) (furnishing dangerous drugs and controlled substances without a  
21 prescription), section 4059.5, subdivision (a) (dangerous drugs and devices ordered by unlicensed  
22 entity, delivered to unlicensed premises and/or not received by pharmacist), section 4059.5,  
23 subdivision (b) (dangerous drugs and devices sold/transferred/delivered to non-board licensed  
24 entities, manufacturer or ultimate user), and section 4126.5, subdivision (a) (furnishing dangerous  
25 drugs to non-approved entities), as follows:

26 15. On or about and between 1993 to 2003, Respondent, as a pharmacist-in-charge of  
27 Sacramento County Primary Care Pharmacy, illegally furnished bulk dangerous drugs, including  
28 controlled substances to an increasing numbers of unlicensed remote locations during the period

1 that he was supervising the pharmacy. The drugs were ordered by persons not verified as being  
2 authorized to do so. The locations to which the drugs were furnished did not have a license to  
3 obtain, receive, or maintain the drugs. The drugs provided were not for patient-specific  
4 prescriptions. The wholesale purchase value of bulk drugs furnished illegally to such locations  
5 was over \$50,000,000.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unlawful Furnishing of Dangerous Drugs and Controlled Substances)**

8 *State and Federal Violations*

9 16. Respondent has subjected his license to disciplinary action under Code section 4301  
10 subdivision (o) and subdivision (j) for violation of Health and Safety Code section 11158  
11 (dispensing controlled substances without prescription) and section 11159 (lack of proper records  
12 for dispensing of controlled substances) as well as and related to federal law sections 21 USC 842  
13 (a)(2), 21 CFR 1301.11, 1301.12 (illegal distribution and furnishing of controlled substances), as  
14 follows:

15 17. On or about and between 1993 to 2003, Respondent allowed the distribution and  
16 furnishing of controlled substances without legal authority, without required inventory records  
17 and without a patient specific prescription or physician order. Schedule II drugs were transferred  
18 without a required DEA 222 form and in quantities in excess what is allowed by law.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unlicensed Activity)**

21 18. Respondent has subjected his license to disciplinary action under Code section 4301,  
22 subdivision (o), for unprofessional conduct, in that Respondent violated the drug wholesaler  
23 licensing requirements as set forth in section 4160, subdivision (a) (acting as a wholesaler without  
24 a license), by furnishing drugs without having a wholesaler license, as further set forth in  
25 paragraphs 15, above.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Incompetence)**

19. Respondent has subjected his license to disciplinary action under Code section 4301 subdivisions (b), on the grounds of unprofessional conduct, in that Respondent failed to act in a competent manner when distributing or furnishing dangerous drugs and controlled substances that were under his supervision, as further set forth in paragraphs 14-18, above.

**FIFTH CAUSE FOR DISCIPLINE**

**(Gross Negligence)**

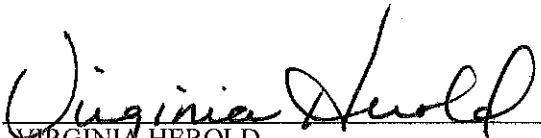
20. Respondent has subjected his license to disciplinary action under Code section 4301 subdivisions (c), on the grounds of unprofessional conduct, in that Respondent committed acts of gross negligence when distributing or furnishing dangerous drugs and controlled substances that were under his supervision, as set further forth in paragraphs 14-18, above.

**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 Number RPH 28914, issued to J. Chris Mitsuoka;
- 2. Ordering J. Chris Mitsuoka 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;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 4/4/13

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

SA2012106632