

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 Case No. 4683

12 In the Matter of the Accusation Against:

13 **PACIFIC PHARMACY SERVICES INC.,**
DBA MEDICINE SHOPPE #565
14 **174 S. Sunrise Way**
Palm Springs, CA 92262

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 48719**

16 **and**

17 **SUNG HOON PARK**
18 **79658 Dandelion Drive**
19 **La Quinta, CA 92253**

20 **Pharmacist License No. RPH 56937**

21 Respondent.

22
23 Complainant alleges:

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

27 2. On or about October 1, 2007, the Board of Pharmacy issued Pharmacy Permit
28 Number PHY 48719 to Pacific Pharmacy Services Inc., dba Medicine Shoppe #565,

1 (Respondent), with Sung Hoon Park as Chief Executive Officer (CEO) since October 1, 2007.
2 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought
3 herein and will expire on October 1, 2013, unless renewed.

4 3. On or about April 7, 2005, the Board of Pharmacy issued Pharmacist License Number
5 RPH 56937 to Sung Hoon Park (Respondent). The Pharmacist License was in full force and
6 effect at all times relevant to the charges brought herein and will expire on February 28, 2015,
7 unless renewed.

8 JURISDICTION

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

12 5. Section 4011 of the Code provides that the Board shall administer and enforce both
13 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
14 Act [Health & Safety Code, § 11000 et seq.].

15 6. Section 4300(a) of the Code provides that every license issued by the Board may be
16 suspended or revoked.

17 7. Section 4300.1 of the Code states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued
19 license by operation of law or by order or decision of the board or a court of law,
20 the placement of a license on a retired status, or the voluntary surrender of a
21 license by a licensee shall not deprive the board of jurisdiction to commence or
proceed with any investigation of, or action or disciplinary proceeding against, the
licensee or to render a decision suspending or revoking the license.

22 STATUTORY PROVISIONS & REGULATORY PROVISIONS

23 8. Section 4022 of the Code states:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar import,

1 the blank to be filled in with the designation of the practitioner licensed to use or
2 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 9. Section 4060 of the Code provides that no person shall possess a controlled substance
6 except that furnished to a person upon a valid prescription.

7 10. Section 4081 of the Code states:

8 (a) All records of manufacture and of sale, acquisition, or disposition of
9 dangerous drugs or dangerous devices shall be at all times during business hours
10 open to inspection by authorized officers of the law, and shall be preserved for at
11 least three years from the date of making. A current inventory shall be kept by
12 every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
13 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
14 or establishment holding a currently valid and unrevoked certificate, license,
15 permit, registration, or exemption under Division 2 (commencing with Section
16 1200) of the Health and Safety Code or under Part 4 (commencing with Section
17 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
18 of dangerous drugs or dangerous devices.

19 (b) The owner, officer, and partner of any pharmacy, wholesaler, or
20 veterinary food-animal drug retailer shall be jointly responsible, with the
21 pharmacist-in-charge or representative-in-charge, for maintaining the records and
22 inventory described in this section.

23 11. Section 4301 of the Code states:

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

28

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

. . . .

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

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

....

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

....

12. Section 4327 of the Code states:

Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

13. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

14. California Code of Regulations, title 16, section 1714 states:

....

(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

....

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

....

15. California Code of Regulations, title 16, section 1718 states:

“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section

1 1304 shall be available for inspection upon request for at least 3 years after the
2 date of the inventory.

3 **COST RECOVERY**

4 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 **DRUGS**

11 17. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
12 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
13 section 4022.

14 18. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety
15 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
16 Code section 4022. It is an anti-anxiety medication in the benzodiazepine family.

17 19. Hydrocodone/apap, is a Schedule III controlled substance pursuant to Health and
18 Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 20. Lorazepam, is a Schedule IV controlled substance pursuant to Health and Safety
21 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
22 Code section 4022.

23 21. Lortab, is a brand name for hydrocodone, a Schedule III controlled substance
24 pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug
25 pursuant to Business and Professions Code section 4022.

26 22. Norco, is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III
27 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
28 dangerous drug pursuant to Business and Professions Code section 4022.

1 27. Board inspectors obtained Respondent Park's medical records which showed that
2 Respondent Park was admitted to Desert Medical Center on December 6, 2011 for lethargy, and
3 slowed and slurred speech. Upon admission to the emergency department, it was noted that
4 Respondent Park appeared to be intoxicated. After multiple tests, Respondent Park was
5 diagnosed with asymptomatic bradycardia and acute medication reaction. A routine urine
6 chemistry revealed that Respondent Park tested positive for benzodiazepines and opiates.

7 28. After learning of the positive test results, Board inspectors interviewed Respondent
8 Park again on October 9, 2012. During this second interview, Respondent Park admitted to
9 Board inspectors that the positive result for benzodiazepine was from taking clonazepam in the
10 early morning on December 6, 2011. Respondent Park stated that he had filled a prescription for
11 clonazepam at Rite Aid pharmacy a few weeks prior. Respondent Park also told Board inspectors
12 that the positive opiate result was due to his taking Vicodin, which he stated had been prescribed
13 to him ten years prior.

14 29. In a written statement to Board inspectors dated October 16, Respondent Park stated
15 that he had a habit of saving leftover medications. He also wrote that he had saved "Norco
16 7.5/500"¹ from ten years prior for when he had dental work done. Respondent Park stated that he
17 had taken one pill of Norco at approximately 3:00 a.m. on December 6, 2011 because his body
18 was feeling achy due to lack of sleep three days in a row. Respondent Park stated that he took
19 one clonazepam 0.5 at 11:00 p.m. and another at 5:00 a.m.

20 30. Respondent Park's prescription records showed that Respondent Park had filled one
21 prescription for hydrocodone/apap 5/500 (Vicodin) dated October 23, 2003 for twelve tablets.

22 31. Board inspectors audited Respondent Medicine Shoppe #565's inventory and drug
23 dispensing records between March 16, 2011 and October 2, 2012, and compared them to sales
24 records obtained from wholesalers (who sold drugs to Respondent Medicine Shoppe #565
25 between March 16, 2011 and October 2, 2012). Board inspectors discovered the following
26 shortages and overages:

27 ¹ Norco is dosed at 7.5/325. Lortab is dosed at 7.5/500. Norco and Lortab are the same
28 drug, but different doses.

Drug	Variance
Clonazepam 0.5	1,405 short
Clonazepam 1	2,451 short
Clonazepam 2	642 short
Hydrocodone/apap 5/325	180 over
Hydrocodone/apap 5/500	1,261 short
Hydrocodone/apap 7.5/750	24,075 dispensed more than purchased
Hydrocodone/apap 10/325	67,480 short
Lorazepam 0.5	743 short
Lorazepam 1	159 over
Alprazolam 0.25	426 short
Alprazolam 0.5	372 short
Alprazolam 1	1,034 short
Alprazolam 2	5,355 short

Respondent Medicine Shoppe #565 did not provide to Board inspectors records of acquisition or disposition for the above drugs.

FIRST CAUSE FOR DISCIPLINE

(Against Respondent Park and Respondent Medicine Shoppe Pharmacy: Failure to Maintain Records of Acquisition and Disposition of Dangerous Drugs and Current Inventory)

32. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of Business and Professions Code section 4081, subdivision (a) and California Code of Regulations, title 16, section 1718, for failing to maintain records of acquisition and disposition of dangerous drugs and for failing to keep a current inventory, as set forth in paragraph 31, which is incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Against Respondent Park and Respondent Medicine Shoppe Pharmacy: Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)

33. Respondents are subject to disciplinary action under section 4301, subdivision (o) for violation of California Code of Regulations, title 16, section 1714, subdivisions (b) and (d), for failing to maintain dangerous drugs in a safe and secure manner, as evidenced by the discrepancies in the audit, as set forth in paragraph 31, which is incorporated herein by reference.

1 Regulations, title 16, sections 1707.1(a), 1716, 1707.2(f) and (g), 1793.7(c), 1715, 1793.7(d) and
2 Code of Federal Regulations, title 21, sections 1304.11, and 1305.13, and ordered Respondent
3 Pacific Pharmacy Services Inc., dba Medicine Shoppe #565 to pay the fine in the amount of
4 \$4,950.00 by August 26, 2011. Respondent complied with the citation.

5 b. On July 27, 2011, the Board issued Citation Number CI 2011 49019 against
6 Respondent Sung Hoon Park for violating Business and Professions Code sections 4105, 4063,
7 4059(a), 4058, 4125, 4104, California Code of Regulations, title 16, sections 1707.1, 1716,
8 1707.2(f) and (g), 1793.7(c), 1715, 1793.7(d) and Code of Federal Regulations, title 21, sections
9 1304.11, and 1305.13, and ordered Respondent Sung Hoon Park to pay the fine in the amount of
10 \$4,900.00 by August 26, 2011. Respondent complied with the citation.

11 c. On December 28, 2012, the Board issued Citation Number CI 2010 48706 against
12 Respondent Pacific Pharmacy Services Inc., dba Medicine Shoppe #565 for violating Business
13 and Professions Code section 733(a) and California Code of Regulations, title 16, section 1711(d)
14 and (e), and ordered Respondent Pacific Pharmacy Services Inc., dba Medicine Shoppe #565 to
15 pay the fine in the amount of \$1,500.00 by January 27, 2013. Respondent complied with the
16 citation.

17 d. On December 28, 2012, the Board issued Citation Number CI 2012 55110 against
18 Respondent Sung Hoon Park for violating Business and Professions Code section 733(a) and
19 California Code of Regulations, title 16, section 1711(d) and (e), and ordered Respondent Sung
20 Hoon Park to pay the fine in the amount of \$1,500.00 by January 27, 2013. Respondent complied
21 with the citation.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Permit Number PHY 48719, issued to Pacific
26 Pharmacy Services Inc., dba Medicine Shoppe #565;

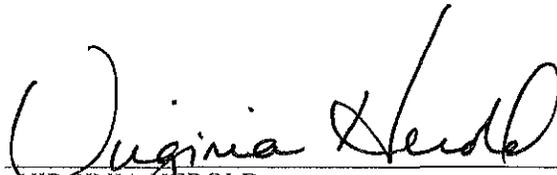
27 2. Revoking or suspending Pharmacist License Number RPH 56937, issued to Sung
28 Hoon Park;

1 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

4 4. Taking such other and further action as deemed necessary and proper.
5

6
7 DATED: _____

7/20/13



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

12 SD2013705299
13 70726537.doc
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28