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

11 In the Matter of the Accusation Against:

Case No. 4687

12 **LISA CHAPLINSKY**
13 **P.O. Box 7617**
Menlo Park, CA 94026

A C C U S A T I O N

14 **Pharmacist License Number RPH 49278**

15 Respondent.

16
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 ("Board"), Department of Consumer Affairs.

21 2. On or about March 20, 1997, the Board issued Pharmacist License Number RPH
22 49278 to Lisa Chaplinsky ("Respondent"). The Pharmacist License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on November 30, 2014, unless
24 renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following laws.
27 All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Code section 4011 provides that the Board shall administer and enforce both the
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
3 [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300(a) provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 STATUTORY AND REGULATORY PROVISIONS

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

15 (f) The commission of any act involving moral turpitude, dishonesty,
16 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.

17 ...

18 (h) The administering to oneself, of any controlled substance, or the use of
19 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
20 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.

21 ...

22 (j) The violation of any of the statutes of this state, of any other state, or
23 of the United States regulating controlled substances and 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 term of this
chapter or of the applicable federal and state laws and regulations governing
27 pharmacy, including regulations established by 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
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the
4 Business and Professions Code, a crime or act shall be considered substantially related
5 to the qualifications, functions or duties of a licensee or registrant if to a substantial
6 degree it evidences present or potential unfitness of a licensee or registrant to perform
7 the functions authorized by her license or registration in a manner consistent with the
8 public health, safety, or welfare.

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

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

13 11. Health and Safety Code section 11170 provides that no person shall prescribe,
14 administer, or furnish a controlled substance for himself or herself.

15 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
18 or subterfuge; or (2) by the concealment of a material fact.

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

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 14. Code section 4021 states:

24 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code.”

26 15. Code section 4022 states, in pertinent part:

27 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe
28 for self use, except veterinary drugs that are labeled as such, 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 “(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.”

2 16. **Oxycodone** is a Schedule II controlled substance as designated by Health and Safety
3 Code section 11055(b)(1)(M), and a dangerous drug pursuant to Code section 4022. It is a
4 powerful narcotic painkiller and a frequent drug of abuse.

5 COST RECOVERY

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

10 FACTUAL BACKGROUND

11 18. Between approximately January 2010 and April 2013, Respondent stole hundreds of
12 oxycodone tablets from two pharmacies and self-administered the drugs to treat post-surgical pain,
13 as follows:

14 19. From approximately January 2010 to December 2012, Respondent worked as the
15 pharmacist-in-charge of Los Altos Pharmacy (PHY 50153) at El Camino Hospital, in Mountain
16 View, California (hereinafter “LAP—Mountain View”). In December 2012, Respondent went to
17 work as a staff pharmacist for Safeway at Store #4526 (“Safeway”) (PHY 51192) after it assumed
18 ownership and management of Los Altos Pharmacy in Los Altos, California. Respondent had
19 access to controlled substances and dangerous drugs at both pharmacies and exploited her
20 employment to divert oxycodone for her own use.

21 Los Altos Pharmacy (at El Camino Hospital), Mountain View

22 20. Between about January 19, 2010, and December 13, 2012, while working as the
23 pharmacist-in-charge at LAP—Mountain View, Respondent stole from the pharmacy, possessed
24 and self-administered, without a valid prescription, large quantities of **oxycodone**, a controlled
25 substance and a dangerous drug. LAP—Mountain View reported losses in the following
26 quantities and strengths:

27 ///

28 ///

<i>Strength</i>	<i>Quantity/Tablets</i>	<i>Variance</i>
5 mg	3,127	66.5 percent
10 mg	2,770	60.2 percent
15 mg	3,150	76.8 percent
20 mg	900	75 percent
30 mg	11,235	29.4 percent

Safeway Store #4526, Los Altos

21. Between about December 14, 2012, and April 27, 2013, while working as a staff pharmacist at Safeway in Los Altos, Respondent stole from the pharmacy, possessed and self-administered, without a valid prescription, large quantities of **oxycodone**, a Schedule II controlled substance and a dangerous drug. Safeway reported losses in the following quantities and strengths:

<i>Strength</i>	<i>Quantity/Tablets</i>	<i>Variance</i>
5 mg	500	23 percent
10 mg	1,140	100 percent
15 mg	900	100 percent
20 mg	914	100 percent
30 mg	1,620	7.8 percent

22. In an effort to conceal her diversion from Safeway, Respondent falsified the pharmacy's Perpetual Inventory Log by reducing the inventory count she recorded from the quantity she actually received, or by increasing the quantities recorded as dispensed by other pharmacists from the quantities actually dispensed.

23. On or about April 29, 2013, Respondent admitted stealing oxycodone from the Safeway pharmacy for self-use to treat chronic, post-surgical pain, and signed a promissory note by which she agreed to repay Safeway \$5,128.00—the approximate value of the drugs Respondent

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1 was estimated to have diverted. On July 2, 2013, Respondent admitted stealing oxycodone from
2 inventory at LAP—Mountain View since December 2012, due to her addiction to pain medication.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct—Acts of Dishonesty, Fraud, Deceit)**

5 24. Respondent's license is subject to disciplinary action for unprofessional conduct
6 pursuant to Code section 4301(f), and/or Health and Safety Code section 11173(a), in that she
7 committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption when she stole
8 oxycodone for her personal use, as described in paragraphs 18 through 23, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct—Self-Administration of a Controlled Substance)**

11 25. Respondent's license is subject to disciplinary action for unprofessional conduct
12 pursuant to Code section 4301(h), and/or Health and Safety Code section 11170, in that she self-
13 administered oxycodone, as described in paragraphs 18 through 23, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct—Unlawful Possession of a Controlled Substance)**

16 26. Respondent's license is subject to disciplinary action for unprofessional conduct
17 pursuant to Code sections 4301(j), 4301(o), 4060, and/or Health and Safety Code section 11350,
18 in that she possessed a controlled substance without a valid prescription, as described in
19 paragraphs 18 through 23, above.

20 **DISCIPLINARY CONSIDERATIONS**

21 27. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges the following:

23 a. On or about February 23, 2012, the Board issued Respondent Citation Number
24 C1 2011 51391, including a \$5,000 fine and an order of abatement, for violation of Code
25 section 4126.5(a)(4), in that, while she was the pharmacist-in-charge at LAP—Mountain View, the
26 pharmacy failed to comply with restrictions on furnishing dangerous drugs to pharmacies
27 or wholesalers. The order of abatement required enrollment in and successful completion
28 within 18 months of a Board-approved course in ethics.

