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

11  
12 Case No. 4819

13 In the Matter of the Accusation Against:

14 **CARE PHARMACY,**  
**DBA CVS PHARMACY #9145**  
15 **9730 Mission Gorge**  
**Santee, CA 92071**

**A C C U S A T I O N**

16 **Pharmacy Permit No. PHY 47974**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 20, 2006, the Board of Pharmacy issued Pharmacy Permit  
24 Number PHY 47974 to Care Pharmacy to do business as CVS Pharmacy #9145 (Respondent).  
25 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on June 1, 2014, unless renewed.

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 section references are to the  
4 Business and Professions Code unless otherwise indicated.

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

8 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
9 suspended or revoked.

10 6. Section 4300.1 of the Code states:

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

17 7. Section 4302 defines "license" to include any license, permit, registration, certificate,  
18 or exemption issued by the board.

19 **STATUTORY PROVISIONS & REGULATORY PROVISIONS**

20 8. Section 4022 of the Code states:

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

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

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

(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.

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9. Section 4301 of the Code states:

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

....

(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.

....

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

(a) All pharmacies (except hospital inpatient pharmacies as defined by Business and Professions Code section 4029 which solely or predominantly furnish drugs to inpatients of the hospital) shall contain an area which is suitable for confidential patient counseling.

(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.

(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes.

(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.

(e) The pharmacy owner, the building owner or manager, or a family member of a pharmacist owner (but not more than one of the aforementioned) may possess a key to the pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key to a pharmacist or 2) providing access in case of emergency. An emergency would include fire, flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that the pharmacist may readily determine whether the key has been removed from the container.

(f) The board shall require an applicant for a licensed premise or for renewal of that license to certify that it meets the requirements of this section at the time of licensure or renewal.

1 (g) A pharmacy shall maintain a readily accessible restroom. The restroom  
2 shall contain a toilet and washbasin supplied with running water.

3 **COST RECOVERY**

4 11. 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 12. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance  
12 pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug  
13 pursuant to Business and Professions Code section 4022.

14 13. Hydrocodone/apap, the generic name for Vicodin and Norco, is a Schedule III  
15 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a  
16 dangerous drug pursuant to Business and Professions Code section 4022.

17 14. Suboxone is a brand name for buprenorphine and naloxone, and is a Schedule III  
18 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a  
19 dangerous drug pursuant to Business and Professions Code section 4022.

20 15. Subutex, is a brand name for buprenorphine, and is a Schedule III controlled  
21 substance pursuant to Health and Safety Code section 11056, subdivision (d), and a dangerous  
22 drug pursuant to Business and Professions Code section 4022.

23 **FACTUAL ALLEGATIONS**

24 16. In the Fall of 2010, a CVS Loss Prevention Manager opened an investigation at  
25 Respondent CVS Pharmacy #9145 based on a report that flagged a high variance in Norco  
26 10/325. On or about October 5, 2010, a covert surveillance camera was installed at CVS  
27 Pharmacy #9145. The video surveillance showed a pharmacy technician T.P. removing bottles  
28 from the shelf, concealing the bottles out of view and then taking the garbage out.

1           17. On or about October 25, 2010, the Loss Prevention Manager met with DEA agents  
2 and a Deputy Sheriff who had been working on the case for two weeks based on a confidential  
3 informant's tip that T.P. was selling hydrocodone/apap and that his source was CVS Pharmacy  
4 #9145. On or about October 28, 2010, the Pharmacist-in-Charge at CVS Pharmacy #9145  
5 reported that another employee saw T.P. conceal a bottle of Vicodin 5/500 in a trash bag and exit  
6 the store to the receiving area. On October 30, 2010, T.P. removed two bottles of  
7 hydrocodone/apap 10/325, concealing it in garbage bags.

8           18. On November 2, 2010, T.P. was apprehended and interviewed by the Department of  
9 Justice, DEA, and the Sheriff's Department. T.P. admitted to taking hydrocodone/apap 10/325-  
10 500 count bottles, Vicodin 5/500-500 count bottles, and alprazolam 2mg-100 count bottles. T.P.  
11 told officers that he was taking orders from his friend who made \$350 per bottle. T.P. admitted  
12 that he stole drugs for approximately five to six months, stealing sometimes on a weekly basis.  
13 T.P. stated that he was able to steal the drugs by using a garbage bag, then prior to disposing it in  
14 the trash bin, he would remove the bottles, hiding them near the trash bins and later coming back  
15 with a CVS bag or lunch bag, which he used to move out the concealed drugs out. He also  
16 admitted that had previously removed drugs from deliveries as they were staged in the stockroom,  
17 outside the pharmacy. T.P. stated that he hid the products in the storeroom, and then brought the  
18 deliveries into the pharmacy.

19           19. During the interview, T.P. admitted to stealing 40 bottles of hydrocodone/apap  
20 10/325, 12 bottles of alprazolam 2 mg, and one bottle of Vicodin 5/500. The cost of the stolen  
21 drugs was \$13,795.87. T.P. was terminated from his employment at CVS Pharmacy #9145 and  
22 the incident was reported to the Board of Pharmacy. An investigation revealed the following  
23 missing drugs, totaling 45,952 tablets from April 30, 2009 through November 6, 2010: Vicodin  
24 5/500, hydrocodone/apap 5/500, hydrocodone/apap 10/325, alprazolam, Suboxone, Suboxone tab,  
25 and Subutex.

1 **CAUSE FOR DISCIPLINE**

2 (Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)

3 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) for  
4 violation of California Code of Regulations, title 16, section 1714, subdivision (b), for failing to  
5 maintain dangerous drugs in a safe and secure manner, as set forth in paragraphs 16 through 19,  
6 which are incorporated herein by reference.

7 **DISCIPLINARY CONSIDERATIONS**

8 21. To determine the degree of discipline, if any, to be imposed on Respondents,  
9 Complainant alleges:

10 a. On September 27, 2010, the Board issued Citation Number CI 2009 44443 against  
11 Respondent for violating California Code of Regulations, title 16, section 1716, for dispensing a  
12 drug that varied from a prescription. There was no order of abatement or fine associated with the  
13 Citation and Respondent did not appeal the Citation.

14 b. On May 8, 2012, the Board issued Citation Number CI 2010 46328 against  
15 Respondent for violating California Code of Regulations, title 16, sections 1716 and 1711(d), and  
16 ordered Respondent to pay the fine in the amount of \$250.00 by June 7, 2012. Respondent  
17 complied with the Citation.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 47974, issued to Care  
22 Pharmacy, dba CVS Pharmacy #9145;

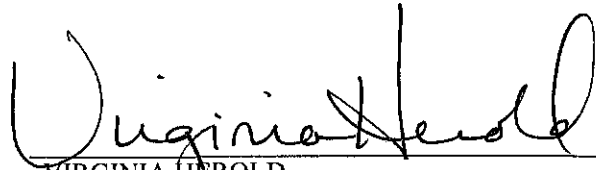
23 2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the  
24 investigation and enforcement of this case, pursuant to Business and Professions Code section  
25 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

6/14/14



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

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