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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. 4866

11 **GREEN'S PHARMACEUTICALS**
12 521 W. 17th Street
13 Long Beach, CA 90813
14 **Original Wholesaler Permit No. WLS 4481**

A C C U S A T I O N

15 and

16 **HILDA A. MATTHEWS**
17 5381 Pine Avenue
Chino Hills, CA 91709
18 **Designated Representative License No. EXC**
18366

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about September 9, 2004, the Board issued Wholesaler Permit Number WLS
26 4481 (Permit) to Green's Pharmaceuticals (Respondent Green's). The Wholesaler Permit was in
27 full force and effect at all times relevant to the charges brought herein and will expire on
28 September 1, 2015, unless renewed.

1 (b) This section does not apply to the furnishing of any dangerous drug or
2 dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .

4 10. Section 4059.5, "**Restrictions on ordering and receiving delivery of dangerous
5 drugs or dangerous devices**", states, in relevant part, that:

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

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

15 11. Section 4160, subdivision (d), provides that the designated representative shall be
16 responsible for the wholesaler's compliance with state and federal laws governing wholesalers.

17 12. Section 4163, subdivision (a), "**Unauthorized persons**", provides that: "A
18 manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous drug or
19 dangerous device to an unauthorized person."

20 13. Section 4169, "**Prohibited acts involving dangerous drugs**", sets forth, in
21 relevant part, that:

22 (a) A person or entity may not do any of the following:

23 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices
24 at wholesale with a person or entity that is not licensed with the board as a wholesaler
25 or pharmacy.

26 14. Section 4301, "**Unprofessional conduct**", states, in pertinent part, as follows:

27 The board shall take action against any holder of a license who is guilty
28 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:

...

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

1 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

2 18. “Promethazine with Codeine” is a dangerous drug, and a Schedule V controlled
3 substance, as designated by Health & Safety Code section 11058 (c)(1). Promethazine with
4 codeine is a prescription cough syrup.

5 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

6 19. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
7 Revenue Service conducted an investigation and surveillance at Green’s in Long Beach and on
8 Lucita Uy. At all times relevant to this matter, Uy was not licensed with the Board and was not
9 an owner/partner/corporate member of the wholesalers or pharmacies which are at issue in this
10 Accusation.

11 20. On June 17, 2008, an unidentified male was observed by the DEA making multiple
12 trips to and from Green’s, and loading boxes consistent with packaging for promethazine with
13 codeine onto a vehicle. Shortly thereafter, Uy was observed getting into the unidentified male’s
14 vehicle. The vehicle departed and was then observed around one hour later entering the secured
15 gate at Arcadia/210 Self Storage. The unidentified male unloaded the boxes from his vehicle and
16 placed them into storage unit A1020, in the presence of Uy. A DEA agent was able to see into
17 the unit and estimated there were at least 300 boxes in the unit, consistent with the packaging for
18 promethazine with codeine.

19 21. On or about June 18, 2008, Uy and two other persons were observed at the storage
20 unit, repackaging and relabeling the boxes.

21 22. On or about June 19, 2008, a van left the Arcadia storage facility. The van was
22 driven to Uy’s residence and was parked in her driveway.

23 23. On or about June 20, 2008, the van departed from Uy’s residence and was stopped by
24 California Highway Patrol officers, who seized 720 one-pint bottles of promethazine with
25 codeine. On or about June 20, 2008, Uy gave consent for agents to search her storage unit,
26 A1020, and 388 boxes with 12 one-pint bottles per box of promethazine with codeine were found
27 and seized from the unit.

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1 24. On or about August 6, 2008, a federal search warrant was executed at Green's and
2 invoices reflecting Green's sales of promethazine with codeine to Blue Rose, Save-Rite and
3 Value Plus were seized by the DEA. The invoices showed sales of approximately 75,719 bottles
4 of promethazine with codeine by Green's to Uy, between April 2006 and July 2008.

5 25. On or about November 24, 2008, DEA Investigators determined that Uy purchased
6 promethazine with codeine from Green's and diverted this controlled substance to Houston,
7 Texas, where it was sold on the street for illegitimate drug use. During an interview by DEA
8 agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000 bottles
9 of promethazine with codeine from Green's, using the DEA registrations of Blue Rose and Save-
10 Rite pharmacies, to sell them on the streets of Houston.

11 26. On an unknown date, the Board learned of a grand jury indictment in the United
12 States District Court for the Central District of California in the case entitled *United States of*
13 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
14 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 15 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
16 controlled substance which is used to control upper respiratory conditions and
17 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
18 over a short period of time.
- 19 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
20 "high" similar to that experienced when a person uses heroin.¹
- 21 • Although the wholesale price for a pint of promethazine with codeine ranges from
22 \$6.95 to \$8.95, the "street value" when purchased illegally as a street drug in the
23 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
24 greater Los Angeles area), during the time period relevant to this matter.

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called "purple drank" (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death.
(See: http://en.wikipedia.org/wiki/Purple_drink).

- 1 • In order to obtain a DEA registration to be able to purchase promethazine with
2 codeine, Uy acquired Plaza Pharmacy (subsequently renamed Save-Rite Pharmacy
3 (Save-Rite)), Dean Health Care Inc. dba Value Plus Pharmacy (Value Plus) and
4 Blue Rose Pharmacy (Blue Rose).
- 5 • Uy purchased promethazine with codeine from the following wholesalers: Modern
6 Medical Products Inc., FMC Distributors, and Coast Laboratories Inc. dba Green's,
7 and then transported it to Texas via vehicles and by shipping it through a parcel
8 service to Texas.
- 9 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
10 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 11 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
12 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
13 the distribution.
- 14 • Green's, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
15 promethazine with codeine.

16 27. U.S.D.C., Central District of California Case No. CR 11 00426 is still pending
17 against Uy, who has been charged with conspiracy to launder money; conspiracy to structure
18 financial transactions; and two counts of criminal forfeiture. Defendant Crawford pled guilty to
19 money laundering and admitted he was part of a criminal conspiracy from an unknown date until
20 August 22, 2008, to engage in financial transactions from proceeds of felonious drug trafficking.
21 The factual basis for Crawford's plea agreement states as follows: The object of the conspiracy
22 was to unlawfully distribute promethazine with codeine and conceal the proceeds from the sale.
23 Uy owned and operated several pharmacies in the Los Angeles area and used their licenses to
24 purchase large quantities of promethazine with codeine. Uy hired drivers to ship approximately
25 720 bottles (one pint per bottle) per shipment to Texas and received between \$50 and \$100 per
26 bottle.

27 28. Beginning in May 2013, the Board's investigator conducted an investigation at
28 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's

1 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
2 invoices for the sales of promethazine with codeine by Green's to Blue Rose, Value Plus and
3 Save-Rite which were seized by the DEA were provided to the Board's investigator. Many of
4 these invoices list "Lucy" under the "PO#".

5 29. The Board's investigation revealed that between approximately March 9, 2007
6 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
7 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
8 April 17, 2006 and July 25, 2008, Respondent Green's distributed excessive amounts of
9 approximately 73,069 pints of promethazine with codeine to Blue Rose and Save-Rite
10 pharmacies, while the initial orders for the drug consisted of 72 pints in April of 2006. Without
11 decreasing order frequency, Respondent Green's distributed as much as 720 pints for a single
12 order in March of 2007, and routinely distributed orders consisting of hundreds of pints only days
13 apart to the same pharmacy. Respondents Green's and Matthews failed to consider this increase
14 in volume as a factor in identifying that the purchase of promethazine with codeine was not for a
15 legitimate medical purpose.

16 30. Respondent Matthews was the Designated Representative-In-Charge (DRIC) of
17 Green's from approximately January 1, 2006 through July 30, 2011. Matthews informed the
18 Board's investigator during an interview that Uy walked into Green's one day and wanted to open
19 an account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
20 promethazine with codeine, because she was the person who had opened the account. According
21 to Matthews, the majority of the time, Uy would pick up the order directly at Green's, but some
22 of her orders were also shipped.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Respondent Green's - Unlawful Transfer, Sale And/Or Delivery
of Dangerous Drugs to Unlicensed Person(s) And/Or Facility)**

25 31. Respondent Green's is subject to disciplinary action under Sections 4300 and 4301,
26 subdivisions (j) and/or (o), for violating Section 4059.5, subdivision (b), in that dangerous drugs
27 may only be transferred, sold or delivered to an entity licensed by the Board, to a manufacturer or
28 to an ultimate user or user's agent. Green's failed to deliver promethazine with codeine to a

1 licensed premise when it allowed Uy to directly purchase it. On or about June 17, 2008,
2 Respondent Green's transferred, sold and/or delivered approximately 4,656 pints of promethazine
3 with codeine to Lucita Uy, an unlicensed individual, and/or her agent, who stored them in an
4 unlicensed facility, Unit A1020 in Arcadia/210 Self Storage, the circumstances of which are more
5 fully set forth in Paragraphs 19 through 30 above, which are incorporated herein by this reference.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Respondent Green's - Unlawful Drug Transfers)**

8 32. Respondent Green's is subject to disciplinary action under Section 4301, subdivision
9 (j), for unlawfully furnishing dangerous drugs to unlicensed/unauthorized persons, in violation of
10 Sections 4163, subdivision (a) and 4169. From approximately June 1, 2007 to July 25, 2008,
11 sales invoices show that Green's sold approximately 25,153 pints of promethazine with codeine
12 to Blue Rose, Pharmacy Permit PHY 47605, after its license had expired on June 1, 2007. The
13 license was expired from June 1, 2007 until January 30, 2008, when SAB Pharmacy took over
14 License PHY 47605 from Blue Rose. From approximately September 6, 2006 to December 29,
15 2006, sales invoices show that Green's sold approximately 11,167 pints of promethazine with
16 codeine to Value Plus, Pharmacy Permit PHY 46801, after its license had expired on September
17 1, 2006. The circumstances are set forth in Paragraphs 19 through 30 above, which are
18 incorporated here by this reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Respondent Green's - Furnishing Controlled Substances
21 For Other Than Legitimate Medical Purposes)**

22 33. Respondent Green's is subject to disciplinary action under Section 4301, subdivision
23 (e) for furnishing controlled substances (promethazine with codeine) to unlicensed/unauthorized
24 persons, knowing or having a conscious disregard for the fact that the controlled substances
25 (promethazine with codeine) were for other than legitimate purposes, in violation of Health &
26 Safety Code section 11153.5. Green's failed to consider that the tremendous increase in the
27 volume of orders of promethazine with codeine, from 72 pints in April of 2006, to hundreds of
28 pints only days apart from the same pharmacy and as many as 720 pints in one order, which were

1 frequently being picked up directly by Uy, indicated that it was being purchased for a non-
2 medically legitimate purpose. The circumstances are set forth in Paragraphs 19 through 30
3 above, which are incorporated here by this reference.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Respondent Matthews - Unlawful Transfer, Sale And/Or Delivery**
6 **of Dangerous Drugs to Unlicensed Person(s))**

7 34. Respondent Matthews is subject to disciplinary action under Sections 4160,
8 subdivision (d), 4300 and 4301, subdivision (j) and/or (o), for violating Section 4059.5,
9 subdivision (b), in that dangerous drugs may only be transferred, sold or delivered to an entity
10 licensed by the Board, to a manufacturer or to an ultimate user or user's agent. While employed
11 as the DRIC of Green's, Respondent Matthews was responsible for ensuring that Green's
12 complied with all federal and state laws applicable to wholesalers, but Matthews failed to ensure
13 that Green's delivered promethazine with codeine to a licensed premise when Uy, who was not
14 licensed with the Board, was permitted to directly purchase it from Green's. On or about June 17,
15 2008, approximately 4,656 pints of promethazine with codeine were transferred, sold and/or
16 delivered by Respondent Green's and/or Matthews to Lucita Uy, an unlicensed individual, and
17 her agent and/or co-conspirator, an unidentified male, who stored them in an unlicensed facility,
18 Unit A1020 in Arcadia/210 Self Storage, the circumstances of which are more fully set forth in
19 Paragraphs 19 through 30 above, and are incorporated here by this reference.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Respondent Matthews - Unlawful Drug Transfers)**

22 35. Respondent Matthews is subject to disciplinary action under Section 4301,
23 subdivision (j), for unlawfully furnishing dangerous drugs to unlicensed/unauthorized persons, in
24 violation of Sections 4163, subdivision (a) and 4169. From approximately June 1, 2007 to July
25 25, 2008, while Matthews was employed as the DRIC of Respondent Green's, sales invoices
26 show that Green's sold approximately 25,153 pints of promethazine with codeine to Blue Rose,
27 Pharmacy Permit PHY 47605, after its license had expired on June 1, 2007. From approximately
28 September 6, 2006 to December 29, 2006, sales invoices show that Green's sold approximately

1 11,167 pints of promethazine with codeine to Value Plus, Pharmacy Permit PHY 46801, after its
2 license had expired on September 1, 2006. The circumstances are set forth in Paragraphs 19
3 through 30 above, and are incorporated here by this reference.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Respondent Matthews – Furnishing Controlled Substances**
6 **For Other Than Legitimate Medical Purposes)**

7 36. Respondent Matthews is subject to disciplinary action under Sections 4160,
8 subdivision (d) and 4301, subdivision (e), for furnishing controlled substances (promethazine
9 with codeine) and/or allowing Respondent Green's (while she was employed as the DRIC for
10 Green's) to furnish controlled substances to unlicensed/ unauthorized persons, knowing or having
11 a conscious disregard for the fact that the controlled substances were for other than legitimate
12 purposes, in violation of Health & Safety Code section 11153.5. Matthews failed to consider that
13 the tremendous increase in the volume of orders of promethazine with codeine, from 72 pints in
14 April of 2006, to hundreds of pints only days apart from the same pharmacy, and as many as 720
15 pints in one order, which were frequently being picked up directly by Uy, indicated that it was
16 being purchased for a non-medically legitimate purpose. The circumstances are set forth in
17 Paragraphs 19 through 30 above, which are incorporated here by this reference.

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 Original Wholesaler Permit Number WLS 4481, issued to
22 Green's Pharmaceuticals;
- 23 2. Revoking or suspending Original Certificate No. EXC 18366, issued to Hilda A.
24 Matthews to act as a designated representative;
- 25 3. Ordering Green's and Hilda A. Matthews to pay the Board of Pharmacy the
26 reasonable costs of its investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and

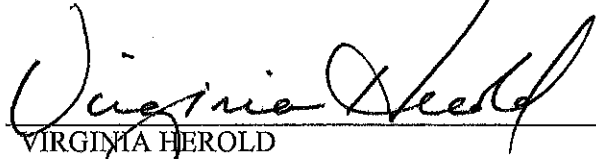
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4. Taking such other and further action as deemed necessary and proper

DATED:

2/10/15



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

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