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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. 4983

11 **SOUTH GATE ROSE PHARMACY, INC.,**
12 **DBA BLUEROSE PHARMACY**
8615 Knott Ave., Suite 7
13 Buena Park, CA 90620

A C C U S A T I O N

14 **Pharmacy Permit No. 47605**

15 And

16 **STEVEN ARTHUR BOYER**
2747 El Caminito Street
17 La Crescenta, CA 91214

18 **Pharmacist License No. RPH 29367**

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, Department of Consumer Affairs.

25 2. On or about June 23, 2006, the Board of Pharmacy (Board) issued Pharmacy Permit
26 No. 47605 to South Gate Rose Pharmacy, Inc., dba Bluerose Pharmacy (Respondent), a retail
27 pharmacy located at 8615 Knott Ave., Suite 7, Buena Park, CA 90620. The Pharmacy Permit
28 was cancelled on December 18, 2007, and has not been renewed.

1 3. Effective January 30, 2008, the Board issued Pharmacy Permit No. PHY 48896 to
2 SAB Pharmacy, a retail pharmacy located at 8615 Knott Avenue, Suite 7, Buena Park, CA 90620,
3 to assume ownership of Bluerose. The Pharmacy Permit expired on January 1, 2009, was not
4 renewed, and was cancelled.

5 4. On or about March 24, 1964, the Board issued Pharmacist License RPH No. 23539 to
6 Vance Holt, which License expired on September 30, 2012 and has not been renewed. From on
7 or about June 23, 2006 until February 9, 2007, Mr. Holt was the Pharmacist-In-Charge (PIC) of
8 Bluerose.

9 5. On or about February 11, 1975, the Board issued Pharmacist License RPH No. 29367
10 to Steven Arthur Boyer (Respondent). The Pharmacist License was in full force and effect at all
11 times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

12 6. On October 26, 2004, the Board issued Save-Rite Pharmacy (Save-Rite), formerly
13 known as Plaza Pharmacy, located at 800 N. Tustin Avenue, Suite H, Santa Ana, CA 92705,
14 Pharmacy Permit No. 46903, which was active until Save-Rite discontinued business, on or about
15 November 16, 2010.

16 7. From approximately November 30, 2004 through February 9, 2009, Gordon Nelson
17 was the PIC for Save-Rite Pharmacy.

18 8. On September 7, 2004, the Board issued Value Plus Pharmacy (Value Plus), a retail
19 pharmacy located inside of a grocery store at 4700 Cherry Avenue, Long Beach, CA 90807,
20 Pharmacy Permit No. 46801, which expired on September 1, 2006.

21 9. Sayyed Saadi, Pharmacist License Number RPH 53497, was the PIC and owner of
22 Value Plus, until he sold the business to Boyer, on August 25, 2005.

23 **JURISDICTION**

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

27 11. Under Section 4300, the Board may discipline any license, for any reason provided in
28 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

12. Section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a 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.

13. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Under Section 4402, subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to the expiration of the three-year period.

STATUTORY PROVISIONS

14. Section 4022 states, in pertinent part:

"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.

(b) Any device that bears the statement: "Caution: federal law restricts 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.

(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.

15. Section 4024 states, in pertinent part:

(a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

16. Section 4036.5 states:

"Pharmacist-in-charge" means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

1 17. Section 4059.5 provides, in relevant part, that:

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

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

8 18. Section 4081 states:

9 (a) All records of manufacture and of sale, acquisition, receipt, or disposition
10 of dangerous drugs or dangerous devices shall be at all times during business hours
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
every . . . pharmacy . . . holding a currently valid and unrevoked certificate,
12 license, permit, registration, or exemption under Division 2 (commencing with
Section 1200) of the Health and Safety Code or under Part 4 (commencing with
13 Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a
stock of dangerous drugs or dangerous devices.

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

17 19. Section 4100 states, in pertinent part:

18 (a) Within 30 days after changing his or her address of record with the board
19 . . . a pharmacist, intern pharmacist, technician, or designated representative shall
20 notify the executive officer of the board of the change of address or change of
name .

21 20. Section 4101¹ states, in pertinent part:

22 (a) A pharmacist who takes charge of, or acts as pharmacist-in-charge of a
23 pharmacy or other entity licensed by the board, who terminates his or her
employment at the pharmacy or other entity, shall notify the board within 30 days
24 of the termination of employment.

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26
27 ¹ Code section 4101 was amended effective January 1, 2010. The prior language in
28 section 4101 is cited and quoted herein since the acts complained of occurred prior to January 1,
2010.

1 21. Section 4105 of the Code states, in pertinent part:

2 (a) All records or other documentation of the acquisition and disposition of
3 dangerous drugs and dangerous devices by any entity licensed by the board shall
be retained on the licensed premises in a readily retrievable form.

4 22. Section 4113² states, in pertinent part:

5 * * * *

6 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
compliance with all state and federal laws and regulations pertaining to the practice
7 of pharmacy.

8 23. Section 4301 of the Code states, in pertinent part:

9 The board shall take action against any holder of a license who is guilty of
unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
10 to, any of the following:

11 * * * *

12 (c) Gross negligence.

13 * * * *

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

15 * * * *

16 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
17 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
18 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

19
20 24. Section 4305³ states, in pertinent part:

21 (c) Any pharmacist who takes charge of, or acts as manager of a pharmacy,
22 who terminates his or her employment at the pharmacy, shall notify the board
within 30 days of termination of employment. Failure to notify the board within the
23 30-day period shall constitute grounds for disciplinary action.

24
25 ² Code section 4113 was amended effective January 1, 2010. The prior language in
section 4113 is cited and quoted herein since the acts complained of occurred prior to January 1,
26 2010.

27 ³ Code section 4305 was amended effective January 1, 2010. The prior language in
section 4305 is cited and quoted herein since the acts complained of occurred prior to January 1,
28 2010.

REGULATORY PROVISIONS

25. California Code of Regulations (CCR), title 16, section 1708.2 states, in pertinent part:

Any permit holder shall contact the board prior to transferring or selling any dangerous drugs, devices or hypodermics inventory as a result of termination of business or bankruptcy proceedings and shall follow official instructions given by the board applicable to the transaction.

26. CCR, title 16, section 1709 states, in pertinent part:

(a) Each permit to operate a pharmacy shall show the name and address of the pharmacy, the form of ownership (individual, partnership or corporation) and the pharmacist-in-charge. Each pharmacy shall, in its initial application and on the annual renewal form, report the name of the pharmacist-in-charge, the names of all owners and the names of the corporate officers (if a corporation). Any changes in the pharmacist-in-charge, or the owners, or corporate officers shall be reported to the Board within 30 days.

(b) Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days.

(c) The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license.

27. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d) provides that:

(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.

28. California Code of Regulations, title 16, section 1718, provides that:

'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.

1 The controlled substances inventories required by Title 21, CFR, Section 1304
2 shall be available for inspection upon request for at least 3 years after the date of the
3 inventory.

4 COST RECOVERY

5 29. Section 125.3 provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation of the licensing
7 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

8 FACTS SUPPORTING CAUSES FOR DISCIPLINE

9 Bluerose Pharmacy

10 30. Respondent Bluerose was an open door retail pharmacy located in a medical building.
11 R.Z. and J.Z. opened the pharmacy at the request of the building owners and a physician. R.Z.
12 sold Bluerose to Lucita Uy and Respondent Boyer. At all times relevant to this action, Uy was
13 not licensed by the Board.

14 31. The Pharmacy Asset Purchase and Sales Agreement (Agreement) dated February 9,
15 2007 indicates that Bluerose was sold to Boyer on February 9, 2007. The Agreement was signed
16 by R.Z. as the seller and President of Bluerose and by Boyer, as the buyer. Uy was not mentioned
17 in the Agreement and did not sign it. Furthermore, the Agreement states that the lease will be
18 transferred to Boyer within 10 days of the execution of the agreement.

19 32. During the negotiations, Uy paid cash to R.Z. and J.Z. for rent at Bluerose and
20 promised to change the name on the lease. However, after selling Bluerose, Uy and Boyer
21 delayed the transfer of the lease. R.Z. and J.Z. claim that, on multiple occasions, they sent letters
22 to Uy and Boyer to change the names on the lease agreement, the Board of Pharmacy license, and
23 the Drug Enforcement Agency (DEA) registration.

24 33. On or about August 14, 2007, R.Z. sent a letter to the DEA and the Board, notifying
25 them of the February 9, 2007 sale of Bluerose to Boyer. Although Bluerose's license was active
26 until June 1, 2007, the corporate officer of Bluerose did not disassociate until on or about
27 December 18, 2007.

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1 **Save-Rite Pharmacy.**

2 34. According to the Board's records, Boyer was the sole corporate owner of Save-Rite.
3 The Board was not notified by Respondent or anyone else between 2006 and August 2008 that
4 Uy was an owner, partner or corporate member of Save-Rite.

5 **Value Plus Pharmacy.**

6 35. Sayyed Saadi was the PIC and owner of Value Plus, License No. PHY 46801 and
7 contends that the other corporate owners of Value Plus were M.K., K.T. and J.S.

8 36. Escrow documents show that Respondent sold Value Plus to Boyer only, on or about
9 August 25, 2005. Uy did not sign any documents related to the purchase of Value Plus by Boyer
10 in 2005.

11 37. Saadi failed to file a discontinuance or disassociation of business as PIC and owner of
12 Value Plus, after the sale of the pharmacy to Boyer. According to the Board's records, no
13 pending change of ownership of the sale of Value Plus to Boyer was ever sent to the Board by
14 anyone. Boyer also failed to notify the Board that he had assumed ownership of Value Plus, and
15 did not designate a PIC for Value Plus after he purchased the pharmacy.

16 38. Value Plus was responsible for the purchase and diversion of approximately 12,985
17 pints of promethazine with codeine⁴ which was sold by Coast Laboratories Inc. dba Green's
18 Pharmaceuticals (Green's), Wholesaler Permit Number WLS 4481, in Long Beach, from on or
19 about June 1, 2006 until November 3, 2007 (Value Plus' license was expired from September 1,
20 2006 through November 3, 2007 when some of the purchases were made).

21 **DEA Investigation.**

22 39. On various dates in June 2008, the DEA and the Internal Revenue Service conducted
23 an investigation and surveillance at Green's, on Uy. At all times relevant to this matter, Uy was
24 not an owner, partner or corporate member of Green's.

25 40. On or about August 6, 2008, a federal search warrant was executed at Green's and
26 invoices reflecting Green's sales of large amounts of promethazine with codeine to Save-Rite, as

27 ⁴ Promethazine with codeine syrup is a controlled substance which is used to treat upper
28 respiratory conditions and as a cough suppressant.

1 well as two other pharmacies, Bluerose and Value Plus, were seized by the DEA. The invoices
2 showed sales of at least approximately 75,719 bottles of promethazine with codeine by Green's to
3 Uy to these pharmacies, between April 2006 and July 2008.

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

10 **Criminal Case Against Lucita Uy and Her Co-Conspirators.**

11 42. 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.⁵
- 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 ⁵ 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 Save-Rite, Value Plus and Bluerose.
- 3 • Uy purchased promethazine with codeine from the following wholesalers: Green's,
4 Modern Medical Products Inc. and FMC Distributors, and then transported it to
5 Texas via vehicles and by shipping it through a parcel service to Texas.
- 6 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
7 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 8 • Co-defendants Crawford and Manigault obtained promethazine with codeine from Uy
9 in Texas, unlawfully distributed the syrup in Texas, and provided Uy with the
10 proceeds from the distribution.
- 11 • Green's, Save-Rite, Value Plus and Bluerose showed a repetitive pattern of sales of
12 promethazine with codeine.

13 43. United States District Court, Central District of California, *United States v. Lucila*
14 *Uy, et al.*, Case No. CR 11-426 is still pending against Uy, who has been charged with
15 conspiracy to launder money; conspiracy to structure financial transactions; and two counts of
16 criminal forfeiture, and currently is set for trial on September 29, 2015. Uy's co-conspirator,
17 defendant Crawford, pled guilty to money laundering and admitted he was part of a criminal
18 conspiracy from an unknown date until August 22, 2008, to engage in financial transactions from
19 proceeds of felonious drug trafficking. The factual basis for Crawford's plea agreement states as
20 follows: The object of the conspiracy was to unlawfully distribute promethazine with codeine
21 and conceal the proceeds from the sale. Uy owned and operated several pharmacies in the Los
22 Angeles area (including but not limited to Save-Rite) and used their licenses to purchase large
23 quantities of promethazine with codeine. Uy hired drivers to ship approximately 720 bottles (one
24 pint per bottle) per shipment to Texas and received between \$50 and \$100 per bottle.

25 **Board's Investigation.**

26 44. Beginning in May 2013, the Board's investigator conducted an investigation at
27 Green's, related to its sales of promethazine with codeine, between 2006 and 2008. Green's
28 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the

1 invoices for the sales of promethazine with codeine by Green's to Save-Rite which were seized
2 by the DEA were provided to the Board's investigator.

3 45. The Board's investigation revealed that between approximately March 9, 2007
4 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
5 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
6 April 17, 2006 and July 25, 2008, Green's distributed excessive amounts of approximately 73,069
7 pints of promethazine with codeine to Save-Rite and Blue Rose pharmacies, while the initial
8 orders for the drug consisted of 72 pints in April of 2006. Without decreasing order frequency,
9 Green's distributed as much as 720 pints for a single order in March of 2007, and routinely
10 distributed orders consisting of hundreds of pints only days apart to the same pharmacy. Between
11 on or about February 9, 2007 and August 1, 2008, Green's sold approximately 39, 174 pints of
12 promethazine with codeine to Bluerose. Between on or about June 1, 2006 and August 1, 2008,
13 Green's sold approximately 29,033 pints of promethazine with codeine to Save-Rite.

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

21 47. On or about May 28, 2013, Respondent Boyer was interviewed by the Board's
22 Inspector. Although only Boyer was listed with the Board as an owner of Save-Rite, Boyer stated
23 that Uy was a "silent partner" who provided all of the financial backing for the pharmacy. A
24 written statement to the Board which was prepared and signed by Boyer, states that Uy was a
25 "silent partner" and he was the "owner". Boyer also claimed that, in general, he was not actively
26 involved in the daily operations of the pharmacy and never worked there. In addition, Boyer did
27 not review the records or invoices for the purchase and sale of medications, and he stated that Uy
28 paid for them by cash or check.

1 48. According to Boyer, he had no knowledge of the purchases of large quantities of
2 promethazine with codeine by Bluerose, Save-Rite or Value Plus, until Uy called and informed
3 him that she had been arrested for possession of promethazine with codeine.

4 49. Boyer was involved in acquiring not only Bluerose, but Save-Rite and Value Plus,
5 pharmacies which were used by Uy to purchase excessively large volumes of promethazine with
6 codeine to sell illegally in Houston. Boyer told the Board's Inspector that Uy paid him \$500 per
7 month for having the pharmacy in his name.

8 50. The sales of promethazine with codeine from Green's to Save-Rite occurred from
9 June 1, 2006-August 1, 2008, while Save-Rite's license was active. There was no activity under
10 Plaza Pharmacy's license.

11 51. According to the perpetual inventory, from approximately September 6, 2006-
12 November 3, 2007, Green's sold 46,660 pints of promethazine with codeine to Value Plus, after
13 its license had expired.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Respondent Bluerose Pharmacy - Failure to Provide Effective**
16 **Control and Security of Dangerous Drugs of Bluerose Pharmacy)**

17 52. Respondent Bluerose is subject to disciplinary action under sections 4301,
18 subdivisions (o) and (j), in that Respondent violated Section 4113, subdivision (c) and California
19 Code of Regulations, title 16, section 1714, subdivision (b), by failing to provide effective control
20 and security against the loss or diversion of dangerous drugs from Bluerose. As a result of this
21 failure, thousands of pints of promethazine with codeine were purchased by Uy, an unlicensed
22 person, from Green's using Bluerose's license, and illegally sold in Texas. Between
23 approximately February 9, 2007 and June 1, 2007, approximately 14,382 pints of promethazine
24 with codeine were purchased from Green's under Bluerose's active license, which were not
25 properly accounted for. Complainant incorporates by reference the allegations which are set forth
26 above in paragraphs 30-51, inclusive.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Respondent Boyer - Failure to Provide Effective**
3 **Control and Security of Dangerous Drugs of Bluerose Pharmacy)**

4 53. Respondent Boyer is subject to disciplinary action under sections 4300 and 4301,
5 subdivisions (o) and (j), in that, while employed as the owner of Bluerose, Respondent Boyer
6 violated Section 4113, subdivisions (a) and California Code of Regulations, title 16, section 1714,
7 subdivisions (b) and/or (d), by failing to provide effective control and security against the loss or
8 diversion of dangerous drugs from Bluerose. As a result of this failure, thousands of pints of
9 promethazine with codeine were purchased by Uy, an unlicensed person, from Green's using
10 Bluerose's license, and illegally sold in Texas. Between approximately February 9, 2007 and
11 June 1, 2007, approximately 14,382 pints of promethazine with codeine were purchased from
12 Green's under Bluerose's active license, which were not properly accounted for. Complainant
13 incorporates by reference the allegations which are set forth above in paragraphs 30-51, inclusive.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Respondent Boyer - Failure to Provide Effective**
16 **Control and Security of Dangerous Drugs of Save-Rite Pharmacy)**

17 54. Respondent Boyer is subject to disciplinary action under sections 4300 and 4301,
18 subdivisions (o) and (j), in that, while employed as the owner of Save-Rite, Respondent Boyer
19 violated Section 4113, subdivisions (a) and California Code of Regulations, title 16, section 1714,
20 subdivisions (b) and/or (d), by failing to provide effective control and security against the loss or
21 diversion of dangerous drugs from Save-Rite. As a result of this failure, thousands of pints of
22 promethazine with codeine were purchased by Uy, an unlicensed person, from Green's using
23 Save-Rite's license, and illegally sold in Texas. Between approximately June 1, 2006 and August
24 1, 2008, approximately 29,033 pints of promethazine with codeine were purchased from Green's
25 under Save-Rite's active license, which were not properly accounted for. Complainant
26 incorporates by reference the allegations which are set forth above in paragraphs 30-51, inclusive.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Respondent Boyer - Failure to Provide Effective**
3 **Control and Security of Dangerous Drugs of Value Plus Pharmacy)**

4 55. Respondent Boyer is subject to disciplinary action under sections 4300 and 4301,
5 subdivisions (o) and (j), in that, while employed as the owner of Value Plus, Respondent Boyer
6 violated Section 4113, subdivisions (a) and California Code of Regulations, title 16, section 1714,
7 subdivisions (b) and/or (d), by failing to provide effective control and security against the loss or
8 diversion of dangerous drugs from Value Plus. As a result of this failure, thousands of pints of
9 promethazine with codeine were purchased by Uy, an unlicensed person, from Green's using
10 Value Plus' license, and illegally sold in Texas. After Value Plus was sold to Boyer on August
11 25, 2005, approximately 12,985 pints of promethazine with codeine were purchased from Green's
12 under Value Plus' license, which were not properly accounted for. Complainant incorporates by
13 reference the allegations which are set forth above in paragraphs 30-51, inclusive.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Respondent Boyer - Failure To Notify of Change**
16 **In Ownership and PIC)**

17 56. Respondent Boyer's license is subject to disciplinary action under sections 4300 and
18 4301, subdivision (o) on the grounds of unprofessional conduct, in that Respondent Boyer failed
19 to notify the Board, in violation of CCR, title 16, section 1709, as follows:

20 a. Violation of section 1709(a): On or about August 25, 2005, Respondent Boyer
21 purchased Value Plus, but failed to notify the Board of the change in ownership, within 30 days.
22 Boyer failed to notify the Board after he purchased the pharmacy that he had an undisclosed
23 partner named Uy, who had provided the funds for the purchase of the pharmacy, the rent and its
24 daily operations.

25 b. Violation of section 1709(a): Respondent Boyer acted as the sole corporate
26 owner of Save-Rite, but failed to notify the Board that he had an undisclosed partner named Uy,
27 who had provided the funds for the purchase of the pharmacy and its daily operations.

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1 c. Violation of section 1709(a): Respondent Boyer acted as the sole corporate
2 owner of Bluerose, but failed to notify the Board after he purchased the pharmacy on February 9,
3 2007, that he had an undisclosed partner named Uy, who had provided the funds for the purchase
4 of the pharmacy and its daily operations.

5 57. Complainant incorporates by reference the allegations which are set forth above in
6 paragraphs 30-51, inclusive.

7 **SIXTH CAUSE FOR DISCIPLINE**
8 **(Respondent Boyer - Unprofessional Conduct**
9 **Gross Negligence)**

10 58. Respondent Boyer is subject to discipline pursuant to section 4301, subdivision (c),
11 for unprofessional conduct, in that Respondent was grossly negligent in allowing Uy, who was
12 not a pharmacist or licensed in any capacity with the Board, to purchase and operate Bluerose,
13 Save-Rite and Value Plus, without exercising any supervision over her. Uy was a silent partner
14 of Boyer's and provided a stipend to him, to be an owner "in name only" of the pharmacy and/or
15 pharmacies. Respondent failed to take reasonable steps to ensure that Uy did not illegally divert
16 controlled substances and dangerous drugs using the licenses of Bluerose, Save-Rite and Value
17 Plus. Business sales records and the Board's documents indicate that after Boyer acquired
18 Bluerose, Save-Rite and Value Plus, excessive amounts of promethazine with codeine were
19 purchased from Green's under these three pharmacies, and then diverted by Uy, an unlicensed
20 person, in violation of Section 4059.5. Complainant incorporates by reference the allegations
21 which are set forth above in paragraphs 30-51, inclusive.

22 **SEVENTH CAUSE FOR DISCIPLINE**
23 **(Respondents Bluerose Pharmacy and Boyer- Delivery**
24 **of Medications to Unlicensed Persons/Premises)**

25 59. Respondents Bluerose and Boyer are subject to disciplinary action for unprofessional
26 conduct within the meaning of section 4301, subdivisions (j) and (o), in conjunction with section
27 4059.5, subdivisions (a) and (b), for permitting Uy, who is not a pharmacist or licensed in any
28 other capacity with the Board, to order controlled substances and dangerous drugs and for
allowing them to be delivered to unlicensed premises and unlicensed persons, including Uy.

1 Complainant incorporates by reference the allegations which are set forth above in paragraphs 30-
2 51, inclusive.

3 **DISCIPLINARY CONSIDERATIONS**

4 60. To determine the degree of discipline, Complainant alleges as follows:

5 a. On or about June 30, 2010, the Board issued administrative Citation No. CI 2009
6 44940 against Respondent Boyer, who failed to notify the Board of Save-Rite's termination of
7 business, in violation of California Code of Regulations, title 16, section 1708.2, and failed to
8 designate a PIC within 120 days of February 23, 2009, when the former PIC of Save-Rite
9 disassociated, in violation of Section 4113 and California Code of Regulations, title 16, section
10 1709.1, subdivision (e). No fine was issued with this citation.

11 b. On or about January 25, 2011, the Board issued administrative Citation No. CI 2010
12 46529 in the amount of \$3,250.00 against Respondent Boyer, for failing to contact the Board
13 prior to transferring or selling any dangerous drugs as a result of the discontinuance of SAB
14 Pharmacy's business and when it vacated the premises on or about March 2009, in violation of
15 California Code of Regulations, title 16, section 1708.2, and for signing under penalty of perjury
16 that he was the individual owner of SAB Pharmacy in the new pharmacy permit application he
17 submitted to the Board for SAB Pharmacy, on or about June 18, 2007. This was contrary to his
18 statements to the Board's Inspector that he was the owner of SAB Pharmacy in name only and all
19 financial expenses were paid by Uy, in violation of Section 4301, subdivision (g) and California
20 Code of Regulations, title 16, section 1709, subdivision (a). The Citation was paid in full.

21 **PRAYER**

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

- 24 1. Revoking or suspending Pharmacy Permit Number 47605, issued to South Gate Rose
25 Pharmacy, Inc., dba Bluerose Pharmacy;
- 26 2. Revoking or suspending Pharmacist License RPH No. 29367, issued to Steven Arthur
27 Boyer;

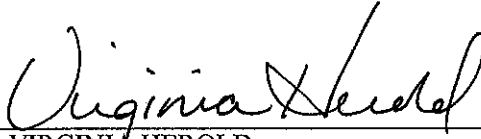
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1 3. Ordering Steven Arthur Boyer to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

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

5
6 DATED: _____

9/21/15



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

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