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

11 In the Matter of the Accusation Against:

Case No. 4997

12 **SADDLEBACK PHARMACY, INC.,**
13 **DBA SADDLEBACK PHARMACY**
28251 Marguerite Pkwy., Ste. D
14 Mission Viejo, CA 92692

15 **Pharmacy Permit No. PHY 50692**

16 **JORDAN BUU PHUNG**
23252 Castle Rock
17 Mission Viejo, CA 92692

18 **Pharmacist License No. RPH 48177**

ACCUSATION

19 Respondents.

20
21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about September 19, 2011, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 50692 to Saddleback Pharmacy, Inc., doing business as Saddleback Pharmacy
28 (Respondent Saddleback Pharmacy). The Pharmacy Permit was in full force and effect at all

1 times relevant to the charges brought herein and will expire on September 1, 2014, unless
2 renewed.

3 3. On or about August 14, 1995, the Board of Pharmacy issued Pharmacist License
4 Number RPH 48177 to Jordan Buu Phung (Respondent Jordan Phung). The Pharmacy Permit
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 May 31, 2015, unless renewed.

7 JURISDICTION

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

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

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

16 7. Section 4300.1 of the Code states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued license
18 by operation of law or by order or decision of the board or a court of law, the
19 placement of a license on a retired status, or the voluntary surrender of a license by a
20 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.

21 STATUTORY AND REGULATORY PROVISIONS

22 8. Section 4059(a) of the Code states:

23 A person may not furnish any dangerous drug, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
26 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
27 naturopathic doctor pursuant to Section 3640.7.

28 9. Section 4301 of the Code states in pertinent part:

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:

1 ...
2 (j) The violation of any of the statutes of this state, or any other state, or of the
3 United States regulating controlled substances and dangerous drugs....
4 ...

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter
7 or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or any other state or federal regulatory
9 agency.
10 ...

11 10. Section 4113(c) of the Code states:

12 The pharmacist-in-charge shall be responsible for a pharmacy's compliance
13 with all state and federal laws and regulations pertaining to the practice of pharmacy.

14 11. Section 4306.5 of the Code states, in pertinent part:

15 Unprofessional conduct for a pharmacist may include any of the following:

16 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
17 his or her education, training, or experience as a pharmacist, whether or not the act
18 or omission arises in the course of the practice of pharmacy or the ownership,
19 management, administration, or operation of a pharmacy or other entity licensed by
20 the board.

21 Acts or omissions that involve, in whole or in part, the failure to consult
22 appropriate patient, prescription, and other records pertaining to the performance of
23 any pharmacy function.

24 12. Health and Safety Code section 11153(a) states:

25 A prescription for a controlled substance shall only be issued for a legitimate
26 medical purpose by an individual practitioner acting in the usual course of his or her
27 professional practice. The responsibility for the proper prescribing and dispensing of
28 controlled substances is upon the prescribing practitioner, but a corresponding
responsibility rests with the pharmacist who fills the prescription. Except as
authorized by this division, the following are not legal prescriptions: (1) an order
purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for an
addict or habitual user of controlled substances, which is issued not in the course of
professional treatment or as part of an authorized narcotic treatment program, for the
purpose of providing the user with controlled substances, sufficient to keep him or
her comfortable by maintaining customary use.

1 13. Section 1707.3 of title 16, California Code of Regulations states:

2 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a
3 patient's drug therapy and medication record before each prescription drug is
4 delivered. The review shall include screening for severe potential drug therapy
5 problems.

6 14. Section 1716 of title 16, California Code of Regulations states:

7 Pharmacists shall not deviate from the requirements of a prescription except
8 upon the prior consent of the prescriber or to select the drug product in accordance
9 with Section 4073 of the Business and Professions Code.

10 Nothing in this regulation is intended to prohibit a pharmacist from exercising
11 commonly accepted pharmaceutical practice in the compounding or dispensing of a
12 prescription.

13 15. Section 1761 of title 16, California Code of Regulations states:

14 (a) No pharmacist shall compound or dispense any prescription which contains
15 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
16 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to
17 obtain the information needed to validate the prescription.

18 (b) Even after conferring with the prescriber, a pharmacist shall not compound
19 or dispense a controlled substance prescription where the pharmacist knows or has
20 objective reason to know that said prescription was not issued for a legitimate
21 medical purpose.

22 COST RECOVERY

23 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

27 DRUGS

28 17. Dilaudid is a brand name for hydromorphone, a Schedule II controlled substance
pursuant to Health and Safety Code section 11054(b)(1)(J) and a dangerous drug pursuant to
Business and Professions Code section 4022.

18. Norco is a brand name for hydrocodone/acetaminophen, a Schedule III controlled
substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
to Business and Professions Code section 4022.

1 26. Dr. M.S. was arrested for allegedly operating a "pill mill" or writing prescriptions for
2 illegitimate purposes. He admitted that none of the prescriptions filled by Respondents and
3 written by him were prescribed for a legitimate medical purpose. He further admitted that he had
4 never seen any of the patients who had prescriptions filled for controlled substances at
5 Respondent Saddleback Pharmacy and that he had never spoken with anyone at Respondent
6 Saddleback Pharmacy.

7 27. Dr. E.S. was under investigation for the same charges as Dr. M.S. Dr. A.V. was
8 deceased when he allegedly wrote controlled substance prescriptions which were filled by
9 Respondents.

10 28. To obtain controlled substances, patients traveled a range of 110 miles to 246.2 miles
11 from their residences to their providers' offices, from the prescribers' offices to Respondent
12 Saddleback Pharmacy and from Respondent Saddleback Pharmacy to their residences.

13 29. Patients paid for the controlled substance prescriptions in cash and did not seek
14 reimbursement from an insurance company or government agency. Respondents sold controlled
15 substances for substantial mark-ups, including a 400 percent mark-up and a 1258 percent mark-
16 up.

17 30. Groups of patients were furnished controlled substances by Respondents at the same
18 time. Respondents' records listed the same home address for various patients who were
19 dispensed controlled substances by Respondents.

20 31. Respondents filled prescriptions for controlled substances which were written in an
21 identical fashion for multiple patients. For example, Dr. E.G.'s patients were prescribed the same
22 "cocktail" of promethazine with codeine, hydrocodone/acetaminophen and alprazolam
23 consistently.

24 32. Respondents filled prescriptions for controlled substances earlier than was written on
25 the prescriptions without authorization from the prescribers. Additionally, Respondents filled
26 controlled substance prescriptions for patients who (1) used multiple pharmacies to fill their
27 controlled substance prescriptions and (2) patients who used multiple prescribers to obtain the
28 same controlled substances.

1 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 33
2 above, which are incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Review Patients' Medication Record Before Prescription Drugs Delivered)**

5 37. Respondents are subject to disciplinary action under Code section 4301(o), for
6 violating title 16, California Code of Regulations, section 1707.3, in that they dispensed
7 prescriptions for controlled substances and dangerous drugs, without review of patients'
8 medication records before each prescription drug was delivered. Such a review would have
9 revealed numerous "red flags," as set forth in paragraphs 22 through 33 above, which are
10 incorporated herein by reference.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Dispensing Controlled Substances with Variations from Prescriptions)**

13 38. Respondents are subject to disciplinary action under Code section 4301(o) for
14 violating title 16, California Code of Regulations, section 1716, in that they dispensed controlled
15 substances which deviated from the requirements of the prescriptions without the prior consent of
16 the prescribers. Specifically, they dispensed controlled substances earlier than prescribed by the
17 providers, as set forth in paragraphs 22 through 33, which are incorporated herein by reference.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding**
20 **Responsibility when Dispensing Controlled Substances**
21 **against Respondent Jordan Phung)**

22 39. Respondent Jordan Phung is subject to disciplinary action under Code section
23 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that she failed
24 to exercise or implement her best professional judgment or corresponding responsibility when
25 dispensing controlled substances, as set forth in paragraphs 22 through 33 above, which are
26 incorporated herein by reference.

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 40. Respondents are subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
5 33 above, which are incorporated herein by reference.

6 PRAYER

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

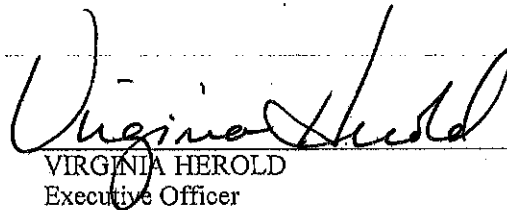
9 1. Revoking or suspending Pharmacy Permit Number PHY 50692, issued to Saddleback
10 Pharmacy, Inc., doing business as Saddleback Pharmacy;

11 2. Revoking or suspending Pharmacist License Number RPH 48177, issued to Jordan
12 Buu Phung;

13 3. Ordering Saddleback Pharmacy, Inc. doing business as Saddleback Pharmacy and
14 Jordan Buu Phung to pay the Board of Pharmacy the reasonable costs of the investigation and
15 enforcement of this case, pursuant to Business and Professions Code section 125.3;

16 4. Taking such other and further action as deemed necessary and proper.
17

18
19 DATED: 4/9/14



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

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