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

10 In the Matter of the Accusation Against:

Case No. 5005

11 **KENT LA DELL MILES**
12 1687 Erringer Rd. #101
13 Simi Valley, CA 93065

A C C U S A T I O N

14 **Pharmacist License No. 30244**

15 **HOME CARE PHARMACY**
16 1687 Erringer Rd. #101
17 Simi Valley, CA 93065

18 **Original Permit No. 32722**

Respondents.

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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 June 8, 1976, the Board of Pharmacy issued Pharmacist License Number
27 30244 to Kent La Dell Miles ("Respondent Miles.") The Pharmacist License will expire on
28 January 31, 2015, unless it is renewed.

1 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
2 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
3 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
4 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

5 9. Section 4301 states:

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

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10 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
11 of Section 11153 of the Health and Safety Code.

12

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

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16 "(l) The conviction of a crime substantially related to the qualifications, functions, and duties
17 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
18 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
19 substances or of a violation of the statutes of this state regulating controlled substances or
20 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
21 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
22 The board may inquire into the circumstances surrounding the commission of the crime, in order to
23 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
24 dangerous drugs, to determine if the conviction is of an offense substantially related to the
25 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
26 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
27 of this provision. The board may take action when the time for appeal has elapsed, or the
28 judgment of conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
2 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
3 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment.

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

10 10. Health and Safety Code Section 11153, subdivision (a), states: A prescription for a
11 controlled substance shall only be issued for a legitimate medical purpose by an individual
12 practitioner acting in the usual course of his or her professional practice. The responsibility for the
13 proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but
14 a corresponding responsibility rests with the pharmacist who fills the prescription. Except as
15 authorized by this division, the following are not legal prescriptions: (1) an order purporting to be
16 a prescription which is issued not in the usual course of professional treatment or in legitimate and
17 authorized research; or (2) an order for an addict or habitual user of controlled substances, which
18 is issued not in the course of professional treatment or as part of an authorized narcotic treatment
19 program, for the purpose of providing the user with controlled substances, sufficient to keep him
20 or her comfortable by maintaining customary use."

21 REGULATORY PROVISION

22 11. California Code of Regulations, title 16, section 1707.3, states:

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

26 12. California Code of Regulations, title 16, section 1761, states:

27 "(a) No pharmacist shall compound or dispense any prescription which contains any
28 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any

1 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
2 validate the prescription.

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

6 13. California Code of Regulations, title 16, section 1770, states:

7 "For the purpose of denial, suspension, or revocation of a personal or facility license
8 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
9 crime or act shall be considered substantially related to the qualifications, functions or duties of a
10 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
11 licensee or registrant to perform the functions authorized by his license or registration in a manner
12 consistent with the public health, safety, or welfare."

13 14. Code of Federal Regulations, title 21, section 1304.11, subdivision (c), states:

14 "Biennial inventory date. After the initial inventory is taken, the registrant shall take a new
15 inventory of all stocks of controlled substances on hand at least every two years. The biennial
16 inventory may be taken on any date which is within two years of the previous biennial inventory
17 date."

18 COST RECOVERY

19 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 CONTROLLED SUBSTANCES

24 16. "Oxycodone," is a Schedule II controlled substance as designated by Health and
25 Safety Code section 11055, subdivision (b)(1)(M), and is categorized as a dangerous drug
26 pursuant to Business and Professions Code section 4022.

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1 17. "Fentanyl," is a Schedule II controlled substance as designated by Health and Safety
2 Code section 11055, subdivision (c)(8), and is categorized as a dangerous drug pursuant to
3 Business and Professions Code section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

6 18. Respondent Miles is subject to disciplinary action under section 4301, subdivision (l),
7 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
8 Miles was convicted of a crime substantially related to the qualifications, functions or duties of a
9 pharmacist, which to a substantial degree evidences his present or potential unfitness to practice in
10 a manner consistent with the public health, safety, or welfare, as follows:

11 a. On or about September 10, 2014, after pleading guilty, Respondent Miles was
12 convicted of one felony count of violating Health and Safety Code section 11153, subdivision (a)
13 [unlawful controlled substance prescription], in the criminal proceeding entitled *The People of the*
14 *State of California v. Kent Ladell Miles* (Super Ct. Ventura County, 2013, No. 2013024722). The
15 Court sentenced Respondent Miles to probation for 36 months.

16 b. The circumstances underlying the conviction are that between April and May of 2013,
17 Respondent Miles sold fentanyl suckers to Patient P.M. without a valid prescription. Respondent
18 Miles sold Patient P.M. over one hundred (100) fentanyl suckers in April of 2013 and sold those
19 suckers for twenty-five dollars each. When questioned by police officers, Respondent Miles
20 admitted that Patient P.M. was addicted to fentanyl and admitted to having "advanced" Patient
21 P.M. fentanyl suckers without a prescription.

22 c. During their investigation officers also found CURES reports for patients of
23 Respondent Miles' that were flagged as being possible "doctor shoppers."¹ This included Patient
24 M.R., who had obtained oxycodone tablets in an amount which would suggest a daily usage of
25 approximately eighty-four (84) tablets and Patient M.M., who obtained oxycodone tablets in an
26 amount which would suggest a daily usage of approximately fifty-four (54) tablets. When

27 ¹ A "doctor shopper" is a patient who obtains controlled substances from multiple health
28 care practitioners without the prescriber's knowledge of the other prescriptions.

1 questioned by officers, Respondent Miles stated that if the doctor vouched for the patient, it was
2 not his decision to make regarding whether to dispense the controlled substances. Complainant
3 refers to, and by this references incorporates, the allegations contained in paragraph 19 below,
4 subparagraphs (a) through (m) inclusive, as though set forth fully.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Exercise Corresponding Responsibility)**

7 19. Respondent Miles and Respondent Pharmacy (collectively, "Respondents") are subject
8 to disciplinary action under section 4301, subdivisions (d), (j) and (o), in conjunction with Health
9 and Safety Code section 11153, subdivision (a), and California Code of Regulations, title 16,
10 section 1761, in that Respondents failed to exercise their corresponding responsibility to ensure
11 that prescriptions dispensed to patients were for a legitimate medical purpose. Investigators
12 reviewed CURES² data for Respondents' patients over a sixth month period³ and found the
13 following:

14 a. On or about March 11, 2013, the Ventura County Sheriff's Department notified the
15 Board that Patient A.M. committed suicide. Patient A.M. had received large numbers of
16 controlled substances from Home Care Pharmacy, was a suspected doctor shopper and "early
17 refiller."⁴ Patient A.M. received at least seven controlled substances that were filled early at Home
18 Care Pharmacy between June 27, 2012, and September 21, 2012. Five of the refills could have
19 been detected if the patient's profile within Respondent Pharmacy's computer record had been
20 reviewed.

21 b. Patient J.C. filled twenty-seven prescriptions from seven different physicians between
22 December 11, 2012, and May 17, 2013. Patient J.C. received overlapping prescriptions of
23

24 ² CURES is the Department of Justice's Controlled Substance Utilization Review and
25 Evaluation System. CURES maintains Schedule II, Schedule III, and Schedule IV prescription
information that is received from California pharmacies.

26 ³ CURES records for Patient A.M. were reviewed separately from the remaining patients.
Excluding Patient A.M., the time period reviewed is the noted sixth month period.

27 ⁴ An "early refiller" is an individual who takes medications more frequently than prescribed,
28 exhausting their supply of medication before the intended time frame and then asking for an early
refill.

1 methadone, Oxycodone and morphine, including one instance of a prescription of oxycodone that
2 was dispensed on a monthly basis but was filled twice within the same month.

3 c. Patient A.D. received prescriptions of Oxycodone and Acetaminophen from six
4 physicians over a three month period. Patient A.D. also received overlapping prescriptions of
5 Hydrocodone and Acetaminophen in January and February of 2013 by two different physicians.

6 d. Patient V.D. received Hydromorphone prescriptions from three different physicians
7 and Hydrocodone / APAP prescriptions from four different physicians between January and April
8 of 2013.

9 e. Patient G.H. received Oxycodone prescriptions from four different physicians between
10 December 2012 and May of 2013.

11 f. Patient A.L. received twenty-two prescriptions from four different physicians between
12 December 7, 2012, and March 27, 2013. The prescriptions included 180 tablets of
13 Hydromorphone 8 mg, which each of the four physicians prescribed for one month, two
14 prescriptions filled within a two week period for 294 and 420 tablets of Methadone 10mg, and
15 prescriptions of Morphine 60 mg and 100 mg from each of the four physicians.

16 g. Patient W.M. received prescriptions of APAP/Hydrocodone from 22 physicians over a
17 4 month time period wherein he also utilized over nine pharmacies.

18 h. Patient D.P. received prescriptions of APAP/Oxycodone and APAP/Hydrocodone
19 from thirteen different physicians between December of 2012 and May of 2013. The amount of
20 APAP / Hydrocodone and APAP/Oxycodone filled during this time period may put Patient D.P. at
21 risk to exceed the maximum daily dose.

22 i. Patient S.S. filled seventeen prescriptions from six different physicians between
23 January 4, 2013, and May 17, 2013, including prescriptions of Suboxone 8mg/2mg, APAP /
24 Oxycodone and Morphine Sulphate 15mg extended-release.

25 j. Patient C.W. filled seventeen prescriptions from five different physicians between
26 December 19, 2012, and May 4, 2013, which included prescriptions of APAP/Hydrocodone and
27 APAP/codeine, which were filled the same day on May 1, but were prescribed by two different
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1 physicians. All of Patient C.W.'s prescriptions during this time period were filled at Home Care
2 Pharmacy.

3 k. Patient M.M. received 25 prescriptions over a six month time period. Patient M.M.
4 obtained oxycodone tablets in an amount which would suggest daily usage of approximately fifty-
5 four (54) tablets. Patient M.M. also obtained hydromorphone in an amount which would suggest
6 daily usage of 12 tablets or 96 mg per day. The highest recommended normal dose of
7 hydromorphone for an opioid-tolerant patient is 24 mg/day, the amount Patient M.M. received is
8 approximately four times this amount.

9 l. Patient M.R. received 43 prescriptions over a six month time period. Patient M.R.
10 obtained oxycodone tablets in an amount which would suggest a daily usage of approximately
11 eighty-four (84) tablets. The dispensation records for Patient M.R. also include information that
12 oxycontin was dispensed in doses greater than 80 mg per day, a daily dosage reserved for opioid
13 tolerant patients. Patient M.R. first received a monthly prescription for 60 tablets of oxycontin 80
14 mg, which would be a daily dosage of 160 mg per dag. The monthly prescription was then
15 increased to 120 tablets of oxycontin 80 mg, which would be a daily dosage of 320 mg per day.
16 The prescription was then increased to 240 tablets of oxycontin 80 mg, which would be a daily
17 dosage of 640 mg per day. All these doses are at an amount reserved for an opioid tolerant
18 patient. There is no upper limit for an opioid tolerant patient, but due to the high volume of the
19 tablets and the short six month period they were dispensed in, it is unlikely the prescriptions were
20 for therapeutic purposes. Patient M.R. also received fentanyl patch prescriptions at an amount
21 which exceeded the necessary amount of patches needed for the monthly prescription period, and
22 150 tablets of Dextroamphetamine / Amphetamine 30 mg, of which the recommended highest dose
23 to treat narcolepsy is 60 mg/day and 40mg/day for pediatric patients in treating A.D.H.D. Patient
24 M.R. was prescribed a dosage of 150mg/day, which is above the highest recommended dosage.

25 m. When questioned by officers, Respondent Miles stated that he contacted the doctors
26 for many of the above patients and that if the doctor vouched for the patient, it was not his
27 decision to make whether or not to dispense the controlled substances.

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DISCIPLINARY CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy, Complainant alleges the following:

a. On or about February 24, 2005, the Board of Pharmacy issued Respondent Pharmacy Citation Number CI 2004 27890, with a \$250.00 fine. Respondent Pharmacy complied with the citation and it is final. The citation alleged that Respondent Pharmacy failed to implement electronic monitoring of Schedule II prescriptions as required by law.

25. To determine the degree of discipline, if any, to be imposed on Respondent Miles, Complainant alleges the following:

a. On or about February 24, 2005, the Board of Pharmacy issued Respondent Miles Citation Number CI 2004 29139, with no associated fine. Respondent Miles complied with the citation and it is final. The citation alleged that Respondent Miles failed to implement electronic monitoring of Schedule II prescriptions as required by law.

PRAYER

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

1. Revoking or suspending Pharmacist License Number 30244, issued to Kent La Dell Miles;

2. Ordering Kent La Dell Miles to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Revoking or suspending Original Permit Number PHY 32722, issued to Home Care Pharmacy, Inc. doing business as Home Care Pharmacy;

4. Ordering Home Care Pharmacy, Inc. doing business as Home Care Pharmacy to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

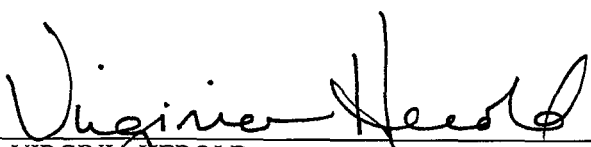
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5. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/15



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

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