

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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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. 5058

11 **WALGREENS PHARMACY NO. 2306**
12 **1138 West Tennyson**
13 **Hayward, CA 94544**

ACCUSATION

14 **Original Permit No. PHY 36136**

15 **LAI WING CHENG**
16 **5413 Reseda Circle**
17 **Fremont, CA 94538**

18 **Pharmacist License No. RPH 46865**

19 **EZBON PRYOR**
20 **249 W. Jackson Street, #104**
21 **Hayward, CA 94544**

22 **Pharmacy Technician License No. TCH**
11293

Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about March 5, 1990, the Board of Pharmacy issued Original Permit Number
28 PHY 36136 to Walgreens No. 2306 (Respondent Walgreens). The Original Permit was in full

1 force and effect at all times relevant to the charges brought herein and will expire on May 1,
2 2015, unless renewed.

3 3. On or about March 4, 1994, the Board of Pharmacy issued Pharmacist License
4 Number RPH 46865 to Lai Wing Cheng (Respondent Cheng). The Pharmacist License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on October
6 31, 2015, unless renewed.

7 4. On or about January 5, 1994, the Board of Pharmacy issued Pharmacy Technician
8 Registration No. TCH 11293 to Ezbon Pryor (Respondent Pryor). The Pharmacy Technician
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 will expire on February 28, 2015, unless renewed.

11 JURISDICTION

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

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

18 7. Section 4300(a) of the Code provides that every license issued by the Board may be
19 suspended or revoked.

20 8. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
21 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
22 disciplinary action during the period within which the license may be renewed, restored, reissued
23 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
24 renewed within three years following its expiration may not be renewed, restored, or reinstated
25 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
26 the Code provides that any other license issued by the Board may be canceled by the Board if not
27 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
28 reissued but will instead require a new application to seek reissuance.

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STATUTORY AND REGULATORY PROVISIONS

9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(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.

(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.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

10. Code section 4060 provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

11. Section 4081 of the Code provides, in pertinent part, that every pharmacy shall keep a current inventory of all dangerous drugs and dangerous devices, and that the owner, officer, and partner of a pharmacy shall be jointly responsible with the pharmacist in charge for maintaining the inventory of dangerous drugs and dangerous devices.

12. Section 4113, subdivision (c) of the Code states:

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

13. California Code of Regulations, title 16, section 1714, subdivision (b) provides that 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.

1 14. California Code of Regulations, title 16, section 1714, subdivision (d) provides that
2 each pharmacist licensed by the board shall be responsible for the security of the prescription
3 department, including provisions for effective control against theft or diversion of dangerous
4 drugs and devices, and records for such drugs and devices, and that possession of a key to the
5 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a
6 pharmacist.

7 15. Health and Safety Code section 11377(a) states, in pertinent part, that no person shall
8 possess Schedule III, IV or V controlled substances, unless upon the valid prescription of a
9 physician or other licensed health care provider.

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

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 17. Section 4021 of the Code states:

15 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code.”

17 18. Section 4022 of the Code states, in pertinent part:

18 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
19 except veterinary drugs that are labeled as such, and includes the following:

20 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
21 prescription,’ ‘Rx only,’ or words of similar import.

22 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
23 prescription or furnished pursuant to Section 4006.”

24 19. **Norco, Vicodin, Vicodin ES, Lortab, and Lorecet** are among the brand names for
25 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
26 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
27 drug as designated by Business and Professions Code section 4022. The varying compounds are
28 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

1 b. On July 31, 2012, pharmacy surveillance cameras depicted Respondent Pryor
2 looking around, then walking up to the pill dispenser machine, opening the cassette containing the
3 **diazepam** pills, pouring an unknown number of pills into his hand a total of three times, and
4 putting them into his pocket. The camera showed him putting the cassette back into the machine,
5 then picking up pills that had fallen to the floor as he poured them into his hand. The surveillance
6 camera also showed that on July 31, 2012, Respondent Pryor removed two bottles of
7 **promethazine/codeine** from the shelf and walked out of the view of the camera, towards the
8 back of the pharmacy, inconsistent with pharmacy policy.

9 c. Subsequent audits of the controlled substances stock of Walgreens Pharmacy
10 No. 2306 revealed a shortage of approximately 25,381 tablets of **Hydrocodone with APAP**
11 **10/325** (generic **Norco**), 120,016 ml of **promethazine/codeine**, and 1880 tablets of **diazepam 10**
12 **mg** for the period from June 10, 2011 to August 15, 2012.

13 FIRST CAUSE FOR DISCIPLINE

14 (Failure to Maintain Pharmacy Security)

15 25. Respondent Walgreens and Respondent Cheng are subject to discipline under section
16 4301(j) and/or (o), and/or section 4113(c), of the Code, in combination with California Code of
17 Regulations, title 16, sections 1714(b) and/or 1714(d), in that, as described in paragraphs 22-24
18 above, Respondents violated statutes regulating controlled substances or dangerous drugs, and/or
19 directly or indirectly violated, attempted to violate, and/or assisted in or abetted violation of, laws
20 or regulations governing the practice of pharmacy, by acts including failure(s) to maintain
21 pharmacy facilities, space, fixtures, and equipment so that drugs were safely and properly
22 prepared, maintained, secured and distributed.

23 SECOND CAUSE FOR DISCIPLINE

24 (Failure to Maintain Accurate and Secure Controlled Substances Inventory)

25 26. Respondent Walgreens and Respondent Cheng are subject to discipline under section
26 4301(j) and/or (o) and/or section 4113(c) of the Code, in combination with section 4081 of the
27 Code, in that, as described in paragraphs 22-24 above, Respondents violated statutes regulating
28 controlled substances or dangerous drugs, and/or directly or indirectly violated, attempted to

1 violate, and/or assisted in or abetted violation of, laws or regulations governing the practice of
2 pharmacy, by acts including failure(s) to maintain an accurate and secure inventory of all
3 controlled substances.

4 THIRD CAUSE FOR DISCIPLINE

5 (Illegal Possession of Controlled Substances)

6 27. Respondent Pryor is subject to discipline under section 4301(j) and/or (o), in
7 combination with section 4060 of the Code and Health and Safety Code section 11377(a), in that,
8 as described in paragraphs 22-25 above, Respondent Pryor illegally possessed controlled
9 substances.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct – Dishonesty, Fraud, Deceit or Corruption)

12 28. Respondent Pryor is subject to discipline under section 4301(f), in that, as described
13 in paragraphs 22-25 above, Respondent Pryor committed acts involving moral turpitude,
14 dishonesty, fraud, deceit, or corruption.

15 PRAYER

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

18 1. Revoking or suspending Original Permit Number PHY 36136, issued to Respondent
19 Walgreens Pharmacy No. 2306;

20 2. Revoking or suspending Pharmacist License Number RPH 46865, issued to
21 Respondent Lai Wing Cheng;

22 3. Revoking or suspending Pharmacist Technician License Number TCH 11293, issued
23 to Respondent Ezbon Pryor;

24 4. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

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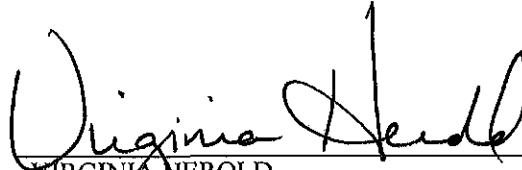
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5. Taking such other and further action as deemed necessary and proper.

DATED:

7/26/14



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

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