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

11 In the Matter of the Accusation Against:

Case No. 5096

12 **RYAN D. RACINO**
13 **4145 Iowa Street, Apt. 1**
14 **San Diego, CA 92104**

ACCUSATION

15 **Pharmacist License No. RPH 63651**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 4, 2010, the Board of Pharmacy issued Pharmacist License
23 Number RPH 63651 to Ryan D. Racino (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
25 unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 5. Section 118 of the Code provides, in pertinent part, that the expiration of a license
8 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
9 licensee or to render a decision imposing discipline on the license.

10 **STATUTORY PROVISIONS**

11 6. Section 4059 of the Code provides, in pertinent part, that a person may not furnish any
12 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

14 7. Section 4060 of the Code states, in pertinent part:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian,
17 or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
18 issued by a certified nurse midwife pursuant to Section 2746.51, a nurse practitioner
19 pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
20 naturopathic doctor pursuant to Section 3640.5, or a pharmacist . . .

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

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

25 . . .

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

29 . . .

30 (g) Knowingly making or signing any certificate or other document that falsely
31 represents the existence or nonexistence of a state of facts.

32 . . .

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

35 . . .

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

6 9. Section 4306 of the Code provides that it shall constitute unprofessional conduct and a
7 violation of this chapter for any person licensed under this chapter to violate, attempt to violate,
8 directly or indirectly, . . . any provision or term of this article. . .

9 10. Section 4324 of the Code states, in pertinent part:

10 (a) Every person who signs the name of another, or of a fictitious person,
11 or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
12 genuine, any prescription for any drugs is guilty of forgery . . .

13 11. Health and Safety Code section 11150 states, in pertinent part:

14 No person other than a physician, dentist, podiatrist, or veterinarian, or
15 naturopathic doctor, . . . or pharmacist, . . . a registered nurse, . . . a certified nurse-
16 midwife, . . . a physician assistant, . . . a naturopathic doctor, . . . or an optometrist, . . .
17 or an out-of-state prescriber, . . shall write or issue a prescription.

18 12. Health and Safety Code section 11157 states:

19 No person shall issue a prescription that is false or fictitious in any respect.

20 13. Health and Safety Code section 11170 states:

21 No person shall prescribe, administer, or furnish a controlled substance for himself.

22 14. Health and Safety Code section 11173 states, in pertinent part:

23 (a) No person shall obtain or attempt to obtain controlled substances, or
24 procure or attempt to procure the administration of or prescription for controlled
25 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
26 concealment of a material fact.

27 (b) No person shall make a false statement in any prescription, order,
28 report, or record, required by this division.

15. Health and Safety Code section 11350 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who
possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph
(1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment . . .

1 **COST RECOVERY**

2 16 Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **DRUGS**

9 17. Lorazepam is a Schedule IV controlled substance as designated by Health and Safety
10 Code section 11057, subdivision (d)(16), and is a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 18. Phentermine is a Schedule IV controlled substance as designated by Health and Safety
13 Code section 11057, subdivision (f), and is a dangerous drug pursuant to Business and Professions
14 Code section 4022.

15 **FACTUAL BACKGROUND**

16 19. On or about January 17, 2011, Respondent began working as a Pharmacist at
17 Community Walgreens (Store Number 13434) located at 640 University Avenue, San Diego, CA
18 92103.

19 20. On or about February 14, 2011, while on duty working as a pharmacist at Walgreens,
20 Respondent received a facsimile of his own prescription for Phentermine 37.5 mg #30 with two
21 refills and processed it under RX 152835.

22 21. On or about February 19, 2011, Respondent, while on duty working as a pharmacist at
23 Walgreens, received an original copy of the same prescription for Phentermine 37.5 mg #30 with
24 two refills. Respondent then processed this prescription for Phentermine as a new prescription
25 under RX 156475 which enabled him to receive three more refills without a prescriber's
26 authorization.

27 22. On or about November 19, 2012, a refill request for Respondent's Lorazepam
28 prescription was sent to Dr. C, who denied the refill authorization for Respondent's prescription.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Forging Prescriptions for Controlled Substances)

3 28. Respondent is subject to disciplinary action for unprofessional conduct under Code
4 sections 4301 (g) and 4324 (a) in that on or about February 19, 2011, while on duty working as a
5 pharmacist at Walgreens on University Avenue in San Diego, Respondent forged refills for the
6 controlled substance Phentermine to himself without authorization from a prescriber in violation of
7 Health and Safety Code sections 11150 and 11173 as set forth in paragraphs 19 to 25, above.

8 29. Respondent is subject to disciplinary action for unprofessional conduct under Code
9 sections 4301 (g) and 4324 (a) in that on or about November 26, 2012, while on duty working as a
10 pharmacist at Walgreens on University Avenue in San Diego, Respondent forged prescriptions for
11 the controlled substance Lorazepam to himself without authorization from a prescriber in violation
12 of Health and Safety Code sections 11150 and 11173 as set forth in paragraphs 19 to 25, above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Furnishing Controlled Substances to Himself)

15 30. Respondent is subject to disciplinary action for unprofessional conduct under Code
16 sections 4301 (j) in that on or about February 19, 2011, while on duty working as a pharmacist at
17 Walgreens on University Avenue in San Diego, Respondent furnished the controlled substance
18 Phentermine to himself without authorization from a prescriber in violation of Health and Safety
19 Code section 11170 as set forth in paragraphs 19 to 25, above.

20 31. Respondent is subject to disciplinary action for unprofessional conduct under Code
21 section 4301 (j) in that on or about November 26, 2012, while on duty working as a pharmacist at
22 Walgreens on University Avenue in San Diego, Respondent furnished the controlled substance
23 Lorazepam to himself without authorization from a prescriber in violation of Health and Safety
24 Code section 11170 as set forth in paragraphs 19 to 25, above.

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FORTH CAUSE FOR DISCIPLINE

(Violated Pharmacy Laws)

32. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 4301 (o) and 4306 in that on or about February 19, 2011, while on duty working as a pharmacist at Walgreens on University Avenue in San Diego, Respondent possessed the controlled substance Phentermine in violation of laws and regulations governing pharmacy in violation of Code section 4060 and Health and Safety Code section 11350 as set forth in paragraphs 19 to 25, above.

33. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 4301 (o) and 4306 in that on or about November 26, 2012, while on duty working as a pharmacist at Walgreens on University Avenue in San Diego, Respondent possessed the controlled substance Lorazepam in violation of laws and regulations governing pharmacy in violation of Code section 4060 and Health and Safety Code section 11350 as set forth in paragraphs 19 to 25, above.

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:

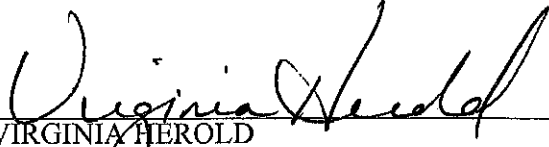
1. Revoking or suspending Pharmacist License Number RPH 63651, issued to Ryan D. Racino;

2. Ordering Ryan D. Racino 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;

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

DATED: 8/12/14 

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

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