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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. 5121

12 **MARLENA ANNE LISE MCCORMAC,**
13 **AKA MARLENA ANNE LISE LUNING,**
14 **AKA MARLENA A. LUNING**
15 **3514 Rock Shelf Lane**
16 **Round Rock, TX 78681**

A C C U S A T I O N

Pharmacist License No. RPH 60361

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 31, 2007, the Board of Pharmacy issued Pharmacist License
24 Number RPH 60361 to Marlana Annelise Luning, also known as Marlana A. Luning, and
25 Marlana Annelise McCormac (Respondent). The Pharmacist License was in full force and effect
26 at all times relevant to the charges brought herein and will expire on August 31, 2015, unless
27 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 (Code) unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

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8 5. Section 4300.1 of the Code states:

9 The expiration, cancellation, forfeiture, or suspension of a board-issued
10 license by operation of law or by order or decision of the board or a court of law,
11 the placement of a license on a retired status, or the voluntary surrender of a
12 license by a licensee shall not deprive the board of jurisdiction to commence or
13 proceed with any investigation of, or action or disciplinary proceeding against, the
14 licensee or to render a decision suspending or revoking the license.

13 **STATUTES**

14 6. Section 499 of the Code states:

15 A board may revoke, suspend, or otherwise restrict a license on the ground
16 that the licensee, in support of another person's application for license, knowingly
17 made a false statement of a material fact or knowingly omitted to state a material
18 fact to the board regarding the application.

18 7. Section 4301 of the Code states:

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

23 . . .

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

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

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1 **COSTS**

2 8. Section 125.3 of the Code states, 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.

6 **FACTS**

7 9. On August 20, 2012, the Board received a Community Pharmacy Permit Application
8 for Delago Pharmacy Inc. located at 31739 Riverside Drive, Suite J in Lake Elsinore, California.
9 The application showed the pharmacist-in-charge was Marlana A. Luning of 42 Beacon Bay in
10 Newport Beach, California and Jorge R. was the contact individual to clarify any information.
11 On May 30, 2012, Marlana A. Luning signed the application as the Owner/President of Delago
12 Pharmacy Inc. under the section labeled "Owners and Officers."

13 10. On May 29, 2012, National Provider Identifier Number 1295095909 was issued for
14 Delago Pharmacy Inc. at 31739 Riverside Drive, Suite J in Lake Elsinore, California, with
15 Marlana A. Luning as the pharmacist-in-charge and listing her Pharmacist License No. RPH
16 60361 as the business's license number.

17 11. On June 5, 2012, a credit application was filed with AmerisourceBergen for Delago
18 Pharmacy Inc. and was signed and personally guaranteed by Marlana A. Luning as 100%
19 Owner/President of Delago Pharmacy Inc. On June 6, 2012, AmerisourceBergen set up a credit
20 approved C.O.D. account for Delago Pharmacy Inc.

21 12. On June 15, 2012, a Statement of Information was filed with the Secretary of State
22 for the State of California for the corporation Delago Pharmacy Inc. to operate as a retail
23 pharmacy. The Statement lists Delago Pharmacy Inc.'s address as 31739 Riverside Drive, Suite J
24 in Lake Elsinore, California with Marlana Annelise Luning as the Chief Executive Officer,
25 Secretary, Chief Financial Officer and Director of the corporation. The Statement lists
26 Respondent's address as 42 Beacon Bay in Newport Beach, California.

27 13. On July 1, 2012, a credit application was filed with Cardinal Health for Delago
28 Pharmacy Inc. and signed by Marlana Luning as 100% President/Owner. The security agreement

1 and guarantee were also signed by Marlana Luning as President/Owner. The credit application
2 lists Jorge R. as the administrator and primary business contact for Delago Pharmacy Inc. On
3 August 7, 2012, Cardinal Health set up a \$10,000 credit limit for Marlana Annelise Luning of
4 Delago Pharmacy Inc.

5 14. On February 21, 2013, during the process of the Board scheduling a new pharmacy
6 site inspection for Delago Pharmacy Inc., Respondent was interviewed. Respondent admitted to a
7 Board inspector that she did not have any ownership in Delago Pharmacy Inc. and that she was
8 not the president of the corporation. Respondent said that the owners of Delago Pharmacy Inc.
9 were Jonathan R.R. and Jorge R. Respondent stated that she signed the credit applications as
10 Owner/President because that was how the owners of Delago Pharmacy Inc. wanted it. Jonathan
11 R.R. and Jorge R. wanted the pharmacy license and the background check to go through
12 Respondent and Respondent agreed to do it. Respondent informed the Board inspector that she
13 had moved to Texas and no longer lives in California.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Acts involving Moral Turpitude, Dishonesty, Fraud and/or Deceit)

16 15. Respondent is subject to disciplinary action under Code section 4301(f) for the
17 commission of acts involving moral turpitude, dishonesty, fraud, or deceit in that she knowingly
18 signed documents and applications as the Owner/President of Delago Pharmacy Inc. when she
19 was not the owner or president of Delago Pharmacy Inc. The circumstances are more specifically
20 set forth above in paragraphs 9 through 14 and as follows:

21 a. Respondent signed the Certification of Applicant on a Community Pharmacy
22 Permit Application as the Owner/President for Delago Pharmacy Inc., which was submitted to the
23 Board.

24 b. Respondent signed a credit application with AmerisourceBergen for Delago
25 Pharmacy Inc. as the 100% Owner/President of Delago Pharmacy Inc. and she personally signed
26 the guarantee for the credit application.

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1 c. Respondent signed the Cardinal Health Credit Application, Agreement and
2 Disclosures form and Security Agreement form for Delago Pharmacy Inc. as the 100%
3 Owner/President of Delago Pharmacy Inc.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Making or Signing a Document that Falsely Represents the Existence or Nonexistence of Facts)

6 16. Respondent is subject to disciplinary action under Code section 4301(g) in that
7 Respondent knowingly made and signed certificates or documents that falsely represented the
8 existence or nonexistence of a state of facts when she signed documents and applications as the
9 Owner/President of Delago Pharmacy Inc. when she was not the owner or president of Delago
10 Pharmacy Inc. The circumstances are more specifically set forth above in paragraphs 9 through
11 14 and as follows:

12 a. Respondent signed the Certification of Applicant on a Community Pharmacy
13 Permit Application as the Owner/President for Delago Pharmacy Inc., which was submitted to the
14 Board.

15 b. Respondent signed a credit application with AmerisourceBergen for Delago
16 Pharmacy Inc. as the 100% Owner/President of Delago Pharmacy Inc. and she personally signed
17 the guarantee for the credit application.

18 c. Respondent signed the Cardinal Health Credit Application, Agreement and
19 Disclosures form and Security Agreement form for Delago Pharmacy Inc. as the 100%
20 Owner/President of Delago Pharmacy Inc.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Making a False Statement of a Material Fact in
23 Support of Another Person's Application for License to the Board)

24 17. Respondent is subject to disciplinary action under Code section 499 in that she
25 knowingly made a false statement of a material fact in support of another person's application for
26 license to the Board. The circumstances are that Respondent signed documents and applications
27 as the Owner/President of Delago Pharmacy Inc. and then submitted to the Board a Certification
28 of Applicant on a Community Pharmacy Permit Application as the Owner/President for Delago

1 Pharmacy Inc., when she was not the owner or president of Delago Pharmacy Inc., as set forth
2 above in paragraphs 9 through 14.

3 **PRAYER**

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

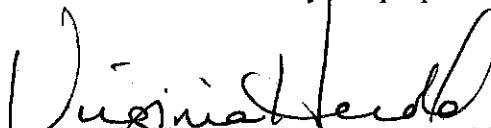
6 1. Revoking or suspending Pharmacist License Number RPH 60361, issued to Marlana
7 Annelise Luning, also known as Marlana A. Luning, and Marlana Annelise McCormac;

8 2. Ordering Marlana Annelise Luning, also known as Marlana A. Luning, and Marlana
9 Annelise McCormac, to pay the Board of Pharmacy the reasonable costs of the investigation and
10 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

12
13 DATED: _____

7/25/14



14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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