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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5132

11 **GORDON ALLEN NELSON**
12 218 Pasteur Place
13 Placentia, CA 92870

A C C U S A T I O N

14 **Pharmacist License No. RPH 31048**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 **LICENSE HISTORY**

21 2. On or about July 29, 1977, the Board of Pharmacy issued Pharmacist License
22 Number RPH 31048 to Gordon Allen Nelson (Respondent). The Pharmacist License expired on
23 July 31, 2013, has not been renewed, and is delinquent.

24 **JURISDICTION**

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

28 ///

1 4. Under Section 4300, the Board may discipline any license, for any reason provided in
2 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

3 5. Section 4300.1 states:

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

10 6. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
11 within three years following its expiration may not be renewed, restored, or reinstated and shall
12 be canceled by operation of law at the end of the three-year period. Under Section 4402,
13 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to
14 the expiration of the three-year period.

15 **STATUTORY AND REGULATORY PROVISIONS**

16 7. Section 4022 provides that:

17 "Dangerous drug" or "dangerous device" means any drug or device
18 unsafe for self use in humans or animals, and includes the following:

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

21 ...

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

24 8. Section 4059 prohibits furnishing of any dangerous drug or dangerous device except
25 upon the prescription of an authorized prescriber.

26 9. Section 4081 states that:

27 (a) All records of manufacture and of sale, acquisition, or disposition of
28 dangerous drugs or dangerous devices shall be at all times during business hours open
to inspection by authorized officers of the law, and shall be preserved for at least
three years from the date of making. A current inventory shall be kept by every
manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,
dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or
establishment holding a currently valid and unrevoked certificate, license, permit,
registration, or exemption under Division 2 (commencing with Section 1200) of the
Health and Safety Code or under Part 4 (commencing with Section 16000) of

1 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
2 drugs or dangerous devices.

3 (b) The owner, officer, and partner of a pharmacy, wholesaler or . . . shall
4 be jointly responsible, with the pharmacist-in-charge or designated representative-in-
5 charge, for maintaining the records and inventory described in this section.

6 (c) The pharmacist-in-charge or designated representative-in-charge shall
7 not be criminally responsible for acts of the owner, officer, partner, or employee that
8 violate this section and of which the pharmacist-in-charge or designated
9 representative-in-charge had no knowledge, or in which he or she did not knowingly
10 participate.

11 10. Section 4105 subdivisions (a) and (c) sets forth, in relevant part that:

12 (a) All records or other documentation of the acquisition and disposition
13 of dangerous drugs and dangerous devices by any entity licensed by the board shall
14 be retained on the licensed premises in a readily retrievable form.

15 ...

16 (c) The records required by this section shall be retained on the licensed
17 premises for a period of three years from the date of making.

18 11. Section 4113, subdivision (c) states as follows: "(c) The pharmacist-in-charge shall be
19 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
20 to the practice of pharmacy."

21 12. Section 4169 sets forth, in relevant part, that:

22 (a) A person or entity may not do any of the following:

23 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices
24 at wholesale with a person or entity that is not licensed with the board as a wholesaler
25 or pharmacy.

26 13. Section 4301 provides, in pertinent part, that the Board shall take action against any
27 holder of a license who is guilty of "unprofessional conduct," defined to include, but not be
28 limited to, any of the following:

...
29

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

32 ...

33 (o) Violating or attempting to violate, directly or indirectly, or assisting in
34 or abetting the violation of or conspiring to violate any provision or term of this
35 chapter or of the applicable federal and state laws and regulations governing
36 pharmacy, including regulations established by the board or by any other state or
37 federal regulatory agency.

1 14. Health and Safety Code section 11150 provides, in pertinent part, that no person other
2 than an authorized prescriber shall write or issue a prescription.

3 15. California Code of Regulations, title 16, section 1714, subdivision (d), provides that:

4 Each pharmacist while on duty shall be responsible for the security of the
5 prescription department, including provisions for effective control against theft or
6 diversion of dangerous drugs and devices, and records for such drugs and devices.
7 Possession of a key to the pharmacy where dangerous drugs and controlled
8 substances are stored shall be restricted to a pharmacist.

9 16. California Code of Regulations, title 16, section 1718, provides that:

10 'Current Inventory' as used in Sections 4081 and 4332 of the Business
11 and Professions Code shall be considered to include complete accountability for all
12 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

13 The controlled substances inventories required by Title 21, CFR, Section
14 1304 shall be available for inspection upon request for at least 3 years after the date of
15 the inventory.

12 COST RECOVERY

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

16 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

17 18. "Promethazine with Codeine" is a dangerous drug, and a Schedule V controlled
18 substance, as designated by Health & Safety Code section 11058, subdivision (c)(1).
19 Promethazine with codeine is a prescription cough syrup.

20 FACTS SUPPORTING CAUSES FOR DISCIPLINE

21 19. From on or about November 30, 2004 through February 9, 2009, Respondent was the
22 Pharmacist-In-Charge (PIC) for Save-Rite Pharmacy, formerly known as Plaza Pharmacy (Save-
23 Rite), located at 800 N. Tustin Avenue, Suite H, Santa Ana, CA 92705. Save-Rite was issued
24 Pharmacy Permit No. 46903 on October 26, 2004, which expired on October 1, 2009.

25 20. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
26 Revenue Service conducted an investigation and surveillance at Coast Laboratories Inc. dba
27 Green's Pharmaceuticals (Green's), Wholesaler Permit Number WLS 4481, in Long Beach, and
28 on a female named Lucita Uy. At all times relevant to this matter, Uy was not licensed with the

1 Board, was not a pharmacist, and was not an owner, partner or corporate member of Green's.
2 Furthermore, the Board was not notified by Respondent or anyone else between 2006 and August,
3 2008, that Uy was an owner, partner or corporate member of Save-Rite. According to the
4 Board's records, Steven Boyer, License No. RPH 29367, was the sole corporate owner of Save-
5 Rite.

6 21. On or about August 6, 2008, a federal search warrant was executed at Green's and
7 invoices reflecting Green's sales of large amounts of promethazine with codeine to Save-Rite, as
8 well as two other pharmacies, Blue Rose Pharmacy (Blue Rose) and Dean Health Care Inc. dba
9 Value Plus Pharmacy (Value Plus), were seized by the DEA. The invoices showed sales of
10 approximately 75,719 bottles of promethazine with codeine by Green's to Uy to Blue Rose
11 Pharmacy and Save-Rite Pharmacy, between April 2006 and July 2008.

12 22. On or about November 24, 2008, DEA Investigators determined that Uy had
13 purchased promethazine with codeine from Green's and diverted this controlled substance to
14 Houston, Texas, where it was sold on the street for illegitimate drug use. During an interview by
15 DEA agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000
16 bottles of promethazine with codeine from Green's, using the DEA registrations of Save-Rite and
17 Blue Rose pharmacies, to sell them on the streets of Houston.

18 23. On an unknown date, the Board learned of a grand jury indictment in the United
19 States District Court for the Central District of California in the case entitled *United States of*
20 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
21 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 22 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
23 controlled substance which is used to control upper respiratory conditions and
24 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
25 over a short period of time.

- 1 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
2 “high” similar to that experienced when a person uses heroin.¹
- 3 • Although the wholesale price for a pint of promethazine with codeine ranges from
4 \$6.95 to \$8.95, the “street value” when purchased illegally as a street drug in the
5 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
6 greater Los Angeles area), during the time period relevant to this matter.
- 7 • In order to obtain a DEA registration to be able to purchase promethazine with
8 codeine, Uy acquired Save-Rite, Value Plus and Blue Rose.
- 9 • Uy purchased promethazine with codeine from the following wholesalers: Green’s,
10 Modern Medical Products Inc. and FMC Distributors, and then transported it to
11 Texas via vehicles and by shipping it through a parcel service to Texas.
- 12 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
13 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 14 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
15 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
16 the distribution.
- 17 • Green’s, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
18 promethazine with codeine.

19 24. U.S.D.C., Central District of California Case No. CR 11 00426 is still pending
20 against Uy, who has been charged with conspiracy to launder money; conspiracy to structure
21 financial transactions; and two counts of criminal forfeiture. Defendant Crawford pled guilty to
22 money laundering and admitted he was part of a criminal conspiracy from an unknown date until
23 August 22, 2008, to engage in financial transactions from proceeds of felonious drug trafficking.
24 The factual basis for Crawford’s plea agreement states as follows: The object of the conspiracy

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called “purple drank” (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death. (See:
http://en.wikipedia.org/wiki/Purple_drink).

1 was to unlawfully distribute promethazine with codeine and conceal the proceeds from the sale.
2 Uy owned and operated several pharmacies in the Los Angeles area (including but not limited to
3 Save-Rite) and used their licenses to purchase large quantities of promethazine with codeine. Uy
4 hired drivers to ship approximately 720 bottles (one pint per bottle) per shipment to Texas and
5 received between \$50 and \$100 per bottle.

6 25. Beginning in May 2013, the Board's investigator conducted an investigation at
7 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's
8 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
9 invoices for the sales of promethazine with codeine by Green's to Save-Rite which were seized
10 by the DEA were provided to the Board's investigator.

11 26. The Board's investigation revealed that between approximately March 9, 2007
12 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
13 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
14 April 17, 2006 and July 25, 2008, Green's distributed excessive amounts of approximately 73,069
15 pints of promethazine with codeine to Save-Rite and Blue Rose pharmacies, while the initial
16 orders for the drug consisted of 72 pints in April of 2006. Without decreasing order frequency,
17 Green's distributed as much as 720 pints for a single order in March of 2007, and routinely
18 distributed orders consisting of hundreds of pints only days apart to the same pharmacy.

19 27. Matthews was the Designated Representative-In-Charge (DRIC) of Green's from
20 approximately January 1, 2006 through July 30, 2011. Matthews informed the Board's
21 investigator during an interview that Uy walked into Green's one day and wanted to open an
22 account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
23 promethazine with codeine, because she was the person who had opened the account. According
24 to Matthews, the majority of the time, Uy would pick up the order directly at Green's, but some
25 of her orders were also shipped.

26 28. From approximately on or about June 1, 2006 through August 1, 2008, while
27 Respondent was Save-Rite's PIC, Save-Rite suffered thefts and/or losses of dangerous
28 drugs/controlled substances, including promethazine with codeine.

1 using Save-Rite's licenses, were safely and properly maintained, secured, distributed and
2 accounted for, as set forth above in Paragraphs 19-31, which allegations are incorporated by
3 reference.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Records of Acquisition and Disposition Open
6 For Inspection and to Keep Current Inventory of Dangerous Drugs)**

7 33. Respondent is subject to disciplinary action pursuant to Sections 4301(j) and 4301(o),
8 for violating Sections 4081, subdivisions (a) and (b) and 4113, subdivision (c), in that, while
9 employed as the PIC of Save-Rite, Respondent failed to keep records of the acquisition and
10 disposition of dangerous drugs open for inspection or keep a current inventory of the stock of
11 dangerous drugs, including promethazine with codeine, so as to maintain complete accountability
12 for all such dangerous drugs, as defined by California Code of Regulations, title 16, section 1718,
13 as set forth above in Paragraphs 19-31, which allegations are incorporated by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Allowing Non-Pharmacist to Sign for and Receive Dangerous Drugs)**

16 34. Respondent is subject to disciplinary action pursuant to Sections 4301, subdivisions
17 (j) and (o), for violating Sections 4113, subdivision (c) and 4059.5 in that, while employed as the
18 PIC of Save-Rite, Respondent allowed Uy, a non-pharmacist who was not licensed with the
19 Board, to sign for, accept, order and/or receive dangerous drugs, including promethazine with
20 codeine, using Save-Rite's licenses, as set forth above in Paragraphs 19-31, which allegations are
21 incorporated by reference as though set forth fully.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(General Unprofessional Conduct)**

24 35. Respondent is subject to disciplinary action under Section 4301 for general
25 unprofessional conduct in that he engaged in the activities described in Paragraphs 19-34 above,
26 which are incorporated herein by reference.

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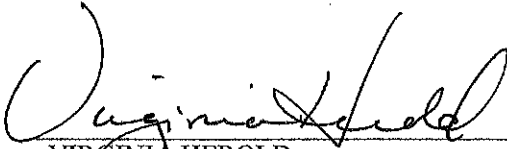
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PRAYER

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 31048, issued to Gordon Allen Nelson;
2. Ordering Gordon Allen Nelson 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/27/15 

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

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