1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General ANTOINETTE B. CINCOTTA Deputy Attorney General State Bar No. 120482 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2095 Facsimile: (619) 645-2061 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11 12	In the Matter of the Accusation Against: Case No. 5145
	ELISA LE
13 14	6331 Beachview Drive Huntington Beach, CA 92648A C C U S A T I O N
	Pharmacist License No. RPH 41913
15	Respondent.
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17	Complainant alleges:
18	PARTIES
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about August 3, 1988, the Board of Pharmacy issued Pharmacist License
22	Number RPH 41913 to Elisa Le (Respondent). The Pharmacist License was in full force and
23	effect at all times relevant to the charges brought herein and will expire on July 31, 2016, unless
24	renewed.
25	JURISDICTION
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27	Consumer Affairs, under the authority of the following laws. All section references are to the
28	Business and Professions Code (Code) unless otherwise indicated.
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	Accusation

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1	4. Section 4011 of the Code provides that the Board shall administer and enforce both
2	the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3	Act [Health & Safety Code, § 11000 et seq.].
4	5. Section 4300, subdivision (a), of the Code provides that every license issued by the
5	Board may be suspended or revoked.
6	6. Section 4300.1 of the Code states:
7	The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law,
8	the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or
9 10	proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.
11	STATUTORY PROVISIONS
12	7. Section 4060 of the Code states:
13	No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
14	veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
15 16	2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
10	pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
18	section shall not apply to the possession of any controlled substance by a
19	manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
20	with the name and address of the supplier or producer.
21	Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
22	stock of dangerous drugs and devices.
23	8. Section 4301 of the Code states in pertinent part:
24	The board shall take action against any holder of a license who is guilty of
25	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but
26	is not limited to, any of the following:
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	Accusation

Accusation

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1 2 3 4 5 6 7	 (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. (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.
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9	COST RECOVERY
10	9. 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 or violations of
12	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13	enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14	renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15	included in a stipulated settlement.
16	DRUG
17	10. <u>Vyvanse</u> is a brand name for lisdexamfetamine, a Schedule II controlled substance
18	pursuant to Health and Safety Code section 11055(d)(1), and a dangerous drug pursuant to
19	Business and Professions Code section 4022.
20	FACTUAL ALLEGATIONS
21	11. At all times mentioned referenced herein, Respondent was employed as a "floating"
22	pharmacist at CVS Pharmacy #8854 located in Santa Ana, California.
23	12. On or about May 29, 2013 at 5:30 p.m., while Respondent was working as a
24	pharmacist, she removed a stock bottle of 100 capsules of Vyvanse 40 mg from the pharmacy
25	safe, placed that bottle into her right smock pocket, put the capsules from the bottle in the pocket
26	of her smock, placed the empty bottle in the receptacle used to dispose of empty stock bottles, and
27	walked out of the pharmacy with the 100 capsules of Vyvanse 40 mg in the pocket of her smock.
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	Accusation

1	13. On June 3, 2013, when confronted by the CVS Pharmacy Regional Loss Prevention
2	Manager and her supervisor, Respondent admitted that she stole the 100 capsules of Vyvanse 40
3	mg contained in the bottle for her son's personal use, without a prescription, and without paying
4	for them. Respondent further admitted that a few weeks prior to June 3, 2013, she also diverted
5	three tablets of another drug from the CVS Pharmacy while working as a pharmacist there.
6	14. On June 4, 2013, Respondent returned all 100 capsules of Vyvanse 40 mg to the CVS
7	Pharmacy.
8	FIRST CAUSE FOR DISCIPLINE
9	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)
10	15. Respondent is subject to disciplinary action under Code section 4301(f), in that she
11	committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in
12	paragraphs 11 through 14, which are incorporated herein by reference.
13	SECOND CAUSE FOR DISCIPLINE
14	(Unlawful Possession of Controlled Substance)
15	16. Respondent is subject to disciplinary action under Code section 4301(0), for violating
16	Code section 4060, in that she possessed a controlled substance without a prescription, as set forth
17	in paragraphs 11 through 14, which are incorporated herein by reference.
18	THIRD CAUSE FOR DISCIPLINE
19	(Unprofessional Conduct)
20	17. Respondent is subject to disciplinary action under Code section 4301 for
21	unprofessional conduct in that she engaged in the activities described in paragraphs 11 through 14
22	above, which are incorporated herein by reference.
23	PRAYER
24	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25	and that following the hearing, the Board of Pharmacy issue a decision:
26	1. Revoking or suspending Pharmacist License Number RPH 41913, issued to Elisa Le;
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I	Accusation

Ordering Elisa Le to pay the Board of Pharmacy the reasonable costs of the 2. investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as deemed necessary and proper. 3. 11/10/14 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2014706897 70904448.doc Accusation