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

11 In the Matter of the Accusation Against:

Case No. 5195

12 **CALVIN A. FURUKAWA**
13 **2311 La Paz Street**
14 **Oceanside, California 92054**

A C C U S A T I O N

15 **Pharmacist License No. RPH 19043**

16 Respondents.

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 April 25, 1953, the Board of Pharmacy issued Pharmacist License
22 Number RPH 19043 to Calvin A. Furukawa (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2014, unless 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 unless otherwise indicated.

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(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 any other state or federal regulatory agency.

...

9. Section 4113 (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.

10. Section 4306.5 of the Code states, in pertinent part:

Unprofessional conduct for a pharmacist may include any of the following:

Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

...

11. Health and Safety Code section 11153 (a) states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

....

12. Health and Safety Code section 11165 (d) states, in pertinent part:

To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of

1 Justice shall, contingent upon the availability of adequate funds from the Contingent
2 Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the
3 State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic
4 Medical Board of California Contingent Fund, maintain the Controlled Substance
5 Utilization Review and Evaluation System (CURES) for the electronic monitoring of,
6 and Internet access to information regarding, the prescribing and dispensing of
7 Schedule II, Schedule III and Schedule IV controlled substances by all practitioners
8 authorized to prescribe or dispense these controlled substances.

9 ...

10 For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
11 substance, as defined in the controlled substances schedule in federal law and
12 regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
13 Title 21 of the Code of Federal Regulations, the dispensing pharmacy or clinic shall
14 provide the following information to the Department of Justice on a weekly basis and
15 in a format specified by the Department of Justice:

16 ...

17 13. Section 1718 of title 16, California Code of Regulations states:

18 "Current Inventory" as used in Section 4081 and 4332 of the Business and
19 Professions Code shall be considered to include complete accountability for all
20 dangerous drugs handled by every licensee enumerated in Section 4081 and 4332.

21 The controlled substances inventories required by Title 21, CFR, Section 1304
22 shall be available for inspection upon request for at least three years.

23 14. Section 1761 of title 16, California Code of Regulations states:

24 (a) No pharmacist shall compound or dispense any prescription which contains
25 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
26 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to
27 obtain the information needed to validate the prescription.

28 (b) Even after conferring with the prescriber, a pharmacist shall not compound
or dispense a controlled substance prescription where the pharmacist knows or has
objective reason to know that said prescription was not issued for a legitimate
medical purpose.

COST RECOVERY

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

1 **DRUG**

2 16. Roxicodone, OxyIR is a brand name for oxycodone, a Schedule II controlled
3 substance pursuant to Health and Safety Code section 11054(b)(M), and a dangerous drug
4 pursuant to Business and Professions Code section 4022.

5 **FACTUAL ALLEGATIONS**

6 17. From October 25, 1984 through May 15, 2014, Respondent Calvin Furukawa was the
7 Pharmacist-in-Charge and owner of a pharmacy license, doing business as El Camino Pharmacy
8 (El Camino Pharmacy.) On or about May 15, 2014, Respondent Calvin Furukawa sold El
9 Camino Pharmacy.

10 18. In late 2010 or early 2011, a female claiming to be a nurse contacted Respondent
11 about filling prescriptions for oxycodone written by Dr. B.O. because the patients were allegedly
12 facing discrimination when trying to have their prescriptions filled by other pharmacists, and they
13 desired better pricing. Respondent agreed to dispense drugs to patients who had prescriptions
14 written by Dr. B.O. Accordingly, from January 17, 2011 through August 25, 2011, Respondent
15 dispensed 306 prescriptions for 73,440 tablets of oxycodone 30 mg which were written by Dr.
16 B.O., who was not a pain management specialist.

17 19. A driver, W.J. would pick up the prescriptions for oxycodone for three to four
18 patients at a time. The prescriptions were paid for in cash and insurance reimbursement for these
19 prescriptions was not sought.

20 20. Patients' residences were approximately 70 miles away from the pharmacy. Dr.
21 B.O.'s office was located in Reseda, California which was approximately 116 miles from El
22 Camino Pharmacy, and his other office was in located in Marina del Rey which was
23 approximately 97 miles from El Camino Pharmacy.

24 21. Respondent filled prescriptions for controlled substances which were written in an
25 identical fashion for multiple patients. For example, Dr. B.O.'s patients were all prescribed
26 oxycodone 30mg, with instructions to take it two to four times a day, with a quantity of 240,
27 which is an unusually large amount of oxycodone to prescribe. This drug therapy was not
28 consistent with appropriate pain management drug therapy in that no other adjunct medications

1 were prescribed. There was also no patient diagnoses provided along with the prescriptions to
2 justify the prescribing of this drug therapy.

3 22. Additionally, Respondent did not review Controlled Substance Utilization Review
4 and Evaluation System ("CURES") reports which would have revealed that Respondent filled
5 controlled substance prescriptions for patients who: (1) used multiple pharmacies to fill their
6 controlled substance prescriptions; and (2) patients who used multiple prescribers to obtain the
7 same controlled substances.

8 23. On June 11, 2011, a Board inspector warned Respondent to be more careful with his
9 dispensing of oxycodone. Respondents ignored those warnings.

10 24. Respondent did not verify or otherwise research whether the prescriptions described
11 in paragraph 18 were written for a legitimate medical purpose before filling them.

12 25. In August 2011, Respondent's drug wholesaler became suspicious of Respondent's
13 large volume purchases of oxycodone, and believed Respondent created an unreasonable risk for
14 potential diversion. The drug wholesaler concluded that Respondent could not adequately justify
15 the quantities of controlled substances ordered by them, and suspended sales of controlled
16 substances to him as of August 24, 2011.

17 26. In 2013, two interim suspension orders were issued against Dr. B.O. for among other
18 violations, writing prescriptions for oxycodone without first having examined the patient for
19 whom the prescriptions were written, which was a violation of the Medical Practice Act.

20 27. From January 2010 through April 2012, Respondent did not provide information for
21 all prescriptions dispensed for a Schedule II, Schedule III or Schedule IV controlled substance to
22 the Department of Justice on a weekly basis for inclusion in CURES.

23 28. From at least January 17, 2011 through April 13, 2012, Respondent did not maintain
24 disposition records for approximately 129 prescriptions or 30,960 tablets of oxycodone 30mg.

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FIRST CAUSE FOR DISCIPLINE

**(Failing to Comply with Corresponding Responsibility
for Legitimate Controlled Substance Prescriptions)**

29. Respondent is subject to disciplinary action under Code section 4301(j), for violating Health and Safety Code section 11153(a), in that he failed to comply with his corresponding responsibility to ensure that controlled substances were dispensed for a legitimate medical purpose when Respondent furnished prescriptions for controlled substances even though "red flags" were present to indicate those prescriptions were not issued for a legitimate medical purpose, as set forth in paragraphs 17 through 28 above, which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

**(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,
Irregularities, Uncertainties, Ambiguities or Alterations)**

30. Respondent is subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, sections 1761(a) and (b), in that he dispensed prescriptions for controlled substances, which contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 17 through 28 above, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

**(Failure to Exercise or Implement Best Professional Judgment or Corresponding
Responsibility when Dispensing Controlled Substances)**

31. Respondent is subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that he failed to exercise or implement his best professional judgment or corresponding responsibility when dispensing controlled substances, as set forth in paragraphs 17 through 28 above, which are incorporated herein by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Report Dispensing of Controlled Prescriptions to CURES)

32. Respondent is subject to disciplinary action under Code section 4301(j), for violating Health and Safety Code section 11165(d), in that he failed to provide any information for all prescriptions dispensed of a Schedule II, Schedule III or Schedule IV controlled substance to the Department of Justice on a weekly basis for inclusion in CURES, as set forth in paragraphs 17 through 28 above, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Disposition)

33. Respondent is subject to disciplinary action under Code section 4301(o), for violating Code section 4081(a), in that he failed to maintain all the records of disposition for oxycodone 30mg, as set forth in paragraphs 17 through 28, which are incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

34. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that he engaged in the activities described in paragraphs 17 through 28 above, which are incorporated herein by reference.

DISCIPLINARY CONSIDERATIONS

35. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that On October 11, 2012, the Board issued Citation Number CI 2012 53974 against Respondent for violating Business and Professions Code section 4342 for having expired drugs in the pharmacy inventory. The Board issued a fine which Respondent paid.

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 19043, issued to Calvin A. Furukawa;

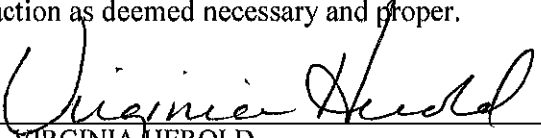
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2. Ordering Calvin A. Furukawa to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/5/14



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

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