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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. 5324

12 **COSTCO CORP. DBA COSTCO**
13 **PHARMACY #454**
14 **115 Technology Drive**
Irvine, CA 92618

ACCUSATION

15 **Pharmacy Permit No. PHY 41247**

16 **LAURA CODY MORRIS**
17 **2900 Bakers St.**
Costa Mesa, CA

18 **Pharmacist License No. RPH 46609**

19 Respondents.

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21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about November 12, 1995, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 41247 to Costco Corp., doing business as Costco Pharmacy #454 (Respondent
28

1 Costco Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the
2 charges brought herein and will expire on October 1, 2015, unless renewed.

3 3. On or about August 19, 1993, the Board of Pharmacy issued Pharmacist License
4 Number RPH 46609 to Laura Cody Morris (Respondent Laura Cody Morris). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on June 30, 2015, unless renewed.

7 JURISDICTION

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

11 5. Section 4011 of the Code provides that the Board shall administer and enforce both
12 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
13 Act [Health & Safety Code, § 11000 et seq.].

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY AND REGULATORY PROVISIONS

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

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

25 ...

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

28 ...

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 any other state or federal regulatory
5 agency.

6 ...
7 9. Section 4113(c) of the Code states:

8 The pharmacist-in-charge shall be responsible for a pharmacy's compliance
9 with all state and federal laws and regulations pertaining to the practice of pharmacy.

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

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

23 ...
24 11. Section 1707.3 of title 16, California Code of Regulations states:

25 Prior to consultation as set forth in section 1707.2, a pharmacist shall review a
26 patient's drug therapy and medication record before each prescription drug is
27 delivered. The review shall include screening for severe potential drug therapy
28 problems.

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

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

(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.

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COST RECOVERY

13. 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.

DRUGS

14. Ambien is the brand name for zolpidem, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and a dangerous drug pursuant to Business and Professions Code section 4022.

15. Klonopin is the brand name for clonazepam, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(b)(7) and a dangerous drug pursuant to Business and Professions Code section 4022.

16. MS Contin is the brand name for morphine sulfate, a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

17. Oxycontin and OxyIR are brand names for oxycodone or oxycodone ER respectively and are Schedule II controlled substances pursuant to Health and Safety Code section 11055(b)(1)(M) and dangerous drugs pursuant to Business and Professions Code section 4022.

18. Percocet is the brand name for acetaminophen/oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

19. Soma is the brand name for carisporodol, a Schedule IV controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

20. Vicodin/Norco is the brand name for acetaminophen/hydrocodone, a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant to Business and Professions Code section 4022.

1 Costco pharmacists must balance providing a high level of member service with ensuring that the
2 prescription is valid and issued for a legitimate medical purpose. Each controlled substance
3 prescription should be evaluated for 'when to fill, when to question, when to delay and when to
4 refuse.'" The policy and procedure still required the Regional Pharmacy Supervisor's review and
5 approval before the filling of a controlled substance prescription could be denied. In order to
6 deny filling a controlled substance prescription, a pharmacist had to show that there was "clear
7 evidence or sufficient reason to suspect a forgery or otherwise invalid prescription" except if there
8 was "confirmed evidence of overlapping therapy" or "confirmation of a fraudulent prescription."
9 The policy and procedure further provided that "[w]ith few exceptions (see Controlled Substance
10 Dispensing Policy) collaboration with your Regional Pharmacy Supervisor is necessary before
11 refusal of your pharmacy service... There must be no doubt that a prescription is fraudulent prior
12 to taking any action or refusing pharmacy services."

13 26. From 2000 through May 2013, the Regional Pharmacy Supervisor made the ultimate
14 decision as to whether to dispense a controlled substance prescription. A pharmacist could also
15 not contact law enforcement about a questionable controlled substance prescription without prior
16 approval and knowledge of the Regional Pharmacy Supervisor and Warehouse Management.
17 Pharmacists were disciplined for violating these policies and procedures.

18 27. As a result of these policies and procedures, Respondents impeded pharmacists from
19 exercising their professional judgment to fill controlled substance prescriptions and to fulfill their
20 corresponding responsibility to ensure that controlled substance prescriptions were issued for
21 legitimate medical purposes. These policies and procedures further allowed for the dispensing,
22 filling and furnishing of drugs without legitimate medical purposes by Respondents and for a lack
23 of research or verifying if prescriptions were written for a legitimate medical purpose before
24 filling them, as discussed in the following paragraphs.

25 28. From May 15, 2007 through August 25, 2010, Respondents filled and dispensed 156
26 controlled substances prescriptions written by Dr. L.T. The average age of Dr. L.T.'s patients was
27 29 years old. The majority of these prescriptions were paid in cash. Patients traveled an average
28 of 33 miles from Dr. L.T.'s offices to Respondent Costco Pharmacy. Dr. L.T. was not certified as

1 a pain management provider or affiliated with the American Board of Physical Medicine and
2 Rehabilitation. There was no stepwise plan for anti-anxiety as Dr. L.T.'s prescriptions were
3 written for an initial therapy that began with high doses of anti-anxiety medications without
4 evidence of prior therapy that would have suggested a stepwise approach.

5 29. On February 3, 2012, a Second Amended Accusation was filed against Dr. L.T. for
6 among other causes for discipline, gross negligence, repeated negligent acts, issuing controlled
7 substances prescriptions for an illegitimate purpose, making and signing false documents,
8 unprofessional conduct for dispensing, prescribing and furnishing dangerous drugs without an
9 appropriate prior examination and medical indication to patients, excessive prescribing and
10 committing dishonest/corrupt acts. Effective March 14, 2012, the Osteopathic Medical Board of
11 California accepted the surrender of Dr. L.T.'s osteopathic physician and surgeon certificate.

12 30. From February 2, 2006 through July 5, 2006, Respondents filled and dispensed 20
13 prescriptions written by Dr. V.L. The average age of Dr. V.L.'s patients was 24 years old. Dr.
14 V.L.'s prescriptions were written for an excessive quantity of controlled substances (*i.e.*,
15 hydrocodone/APAP 10/325mg with the average number of tablets equaling 180) and unusually
16 high dosages or strength (*i.e.*, 40-50 mg of hydrocodone and 1-1.5 mg of Tylenol per day).
17 Patients traveled an average of 17 miles from Dr. V.L.'s offices to Respondent Costco Pharmacy.
18 Dr. V.L. was not certified as a pain management provide or affiliated with the American Board of
19 Physical Medicine and Rehabilitation.

20 31. On June 15, 2009, in the United States District Court for the Central District of
21 California, Dr. V.L. pleaded guilty to 15 counts charging violations of Title 18 U.S.C. § 841
22 (a)(1), intentional and unlawful distribution and dispensing of Schedule II and III controlled
23 substances outside the scope of professional practice. Effective October 1, 2010, the Medical
24 Board of California adopted a Decision revoking his license for convictions of crimes that are
25 substantially related to the practice of medicine, violating federal laws regulating dangerous drugs
26 or controlled substances and engaging in acts involving dishonesty or corruption.

27 32. From July 27, 2005 through November 19, 2008, Respondents filled and dispensed 47
28 prescriptions written by Dr. C.G. The average age of Dr. C.G.'s patients was 26 years old.

1 Patients traveled an average of 27 miles from Dr. C.G.'s offices to Respondent Costco Pharmacy.
2 Dr. C.G. was not certified as a pain management provider or affiliated with the American Board
3 of Physical Medicine and Rehabilitation. There was no stepwise plan for anti-anxiety as Dr.
4 C.G.'s prescriptions were written for an initial therapy that began with high doses of anti-anxiety
5 medications without evidence of prior therapy that would have suggested a stepwise approach.

6 33. On or about June 11, 2008, Dr. C.G. was convicted upon her plea of *nolo contendere*
7 in a criminal proceeding filed in Los Angeles County Superior Court to the felonies of unlawfully
8 prescribing controlled substances, in violation of Health and Safety Code section 11153(a) and
9 prescribing or administering prescription drugs to an addict or habitual user, in violation of Health
10 and Safety Code section 11156. On or about September 12, 2008, a First Amended Accusation
11 was filed against Dr. C.G. for among other causes for discipline, gross negligence, repeated
12 negligent acts, prescribing to an addict, prescribing without appropriate examination, failure to
13 maintain adequate and accurate records and excessive prescribing. Effective March 23, 2009, Dr.
14 C.G.'s physician and surgeon's certificate was placed on probation for seven years by the Medical
15 Board of California.

16 **FIRST CAUSE FOR DISCIPLINE**

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

19 34. Respondents are subject to disciplinary action under Code section 4301(j), for
20 violating Health and Safety Code section 11153(a), in that they failed to comply with their
21 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
22 medical purpose when Respondents furnished prescriptions for controlled substances even though
23 "red flags" were present, indicating those prescriptions were not issued for a legitimate medical
24 purpose, as set forth in paragraphs 22 through 33 above, which are incorporated herein by
25 reference.
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1 **SECOND CAUSE FOR DISCIPLINE**

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

4 35. Respondents are subject to disciplinary action under Code section 4301(o), for
5 violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed
6 prescriptions for controlled substances, which contained significant errors, omissions,
7 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 33
8 above, which are incorporated herein by reference.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 36. Respondents are subject to disciplinary action under Code section 4301 for
12 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
13 33 above, which are incorporated herein by reference.

14 **DISCIPLINARY CONSIDERATIONS**

15 37. To determine the degree of discipline, if any, to be imposed on Respondent Costco
16 Pharmacy, Complainant alleges that on May 17, 2012, the Board issued Citation number CI 2011
17 49350 against Respondent Costco Pharmacy for violating California Code of Regulations, title
18 16, section 1764 and Civil Code section 56.10 for the unauthorized disclosure of prescription and
19 medical information. The Board issued a fine which Respondent paid.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Permit Number PHY 41247 issued to Costco
24 Corp., doing business as Costco Pharmacy #454;

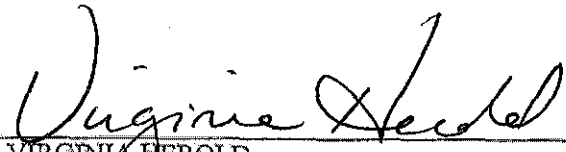
25 2. Revoking or suspending Pharmacist License Number RPH 46609 issued to Laura
26 Cody Morris;

1 3. Ordering Costco Corp., doing business as Costco Pharmacy #454 and Laura Cody
2 Morris to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of
3 this case, pursuant to Business and Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.
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6
7 DATED:

3/31/15



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

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