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

10 In the Matter of the Accusation Against:

Case No. 5487

11 **CLIVE L. LIN**
12 **601 Toscana Court**
13 **Brentwood, CA 94513**

A C C U S A T I O N

14 **Pharmacist License No. RPH 41552**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about April 23, 1988, the Board of Pharmacy issued Pharmacist License
21 Number RPH 41552 to Clive L. Lin (Respondent). The Pharmacist License was in full force and
22 effect at all times relevant to the charges brought herein and will expire on August 31, 2017, unless
23 renewed.

24 **JURISDICTION**

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

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1 4. Code section 4300 provides that every license issued by the Board may be suspended
2 or revoked.

3 5. Code section 4300.1 states:

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

9 **STATUTORY AND REGULATORY PROVISIONS**

10 6. Code section 4059 states:

11 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
12 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
13 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
15 3640.7.

16 "..."

17 7. Code section 4060 states:

18 "A person shall not possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
22 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
24 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics
25 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
26 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock
27 in containers correctly labeled with the name and address of the supplier or producer.

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1 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
2 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

3 "

4 8. Code section 4301 states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 "...

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

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

14 "...

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

17 "...

18 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
19 violation of or conspiring to violate any provision or term of this chapter or of the applicable
20 federal and state laws and regulations governing pharmacy, including regulations established by the
21 board or by any other state or federal regulatory agency.

22 "..."

23 9. Health and Safety Code section 11170 provides that no person shall prescribe,
24 administer, or furnish a controlled substance for himself.

25 10. Health and Safety Code section 11173 states, in pertinent part, that:

26 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
27 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
28 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

1 "...

2 "(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
3 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
4 veterinarian, registered nurse, physician's assistant, or other authorized person.

5 "..."

6 11. California Code of Regulations, Title 16, section 1714, provides, in pertinent part:

7 "...

8 "(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
9 equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The
10 pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of
11 pharmacy.

12 "..."

13 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

14 12. Code Section 4022 states:

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

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

19 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by
20 or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
21 with the designation of the practitioner licensed to use or order use of the device.

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

24 13. Sonata is a brand name for Zaleplon, a sedative used to treat insomnia, and is a
25 dangerous drug per Business and Professions code section 4022 and controlled substance per
26 Health and Safety Code section 11057(d)(31).

27 14. Lioresal is a brand name for Baclofen, a muscle relaxer and antispastic agent used to
28 treat multiple sclerosis, and is a dangerous drug per Business and Professions Code section 4022.

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15. Mupirocin is an antibiotic that is a dangerous drug per Business and Professions Code section 4022.

16. Remeron is a brand name for Mirtazapine, an antidepressant used to treat major depressive disorder, and is a dangerous drug per Business and Professions Code section 4022.

17. Robaxin is a brand name for methocarbamol, a muscle relaxer used to treat pain or injury, and is a dangerous drug per Business and Professions Code section 4022.

18. Septra DS is a brand name for sulfamethoxazole with trimethoprim, an antibiotic and is a dangerous drugs per Business and Professions Code section 4022.

19. Seroquel is a brand name for quetiapine, an antipsychotic medication used to treat schizophrenia and bipolar disorder, and is a dangerous drug per Business and Professions Code section 4022.

20. Zoloft is a brand name for sertraline, an antidepressant used to treat major depressive disorder, and is a dangerous drug per Business and Professions Code section 4022.

COST RECOVERY

21. Code section 125.3 states, 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.

FACTS

22. Between approximately October 17, 2005 and September 5, 2014, Respondent served as the Pharmacist in Charge (PIC) at Raley’s Pharmacy #336, in Brentwood, California.

23. On or about September 4, 2014, Respondent admitted to Raley’s Pharmacy staff that he had been taking Zaleplon from the pharmacy without having a prescription on file and without paying for the product.

24. An audit summary revealed that from May 2013 to September 30, 2014, Raley’s Pharmacy had a shortage of approximately 5,119 dosage units of Zaleplon 10mg.

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1 25. Between at least on or about September 17, 2012 and October 9, 2014, Respondent
2 created 17 fraudulent prescriptions for Sonata (Zaleplon). Respondent purported to be Dr.
3 Donald Siao and orally transmitted the prescriptions for various patients, to various pharmacies.

4 26. Between at least on or about January 5, 2013 and January 7, 2015, Respondent
5 created fraudulent prescriptions for Sonata, Lioresal, Robaxin, Septra DS, Zoloft; Seroquel,
6 Mupirocin, and Remeron and furnished them to himself, I.C.¹ and E.C.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Theft of Controlled Substances)

9 27. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (f)
10 and/or (o), and/or Health and Safety Code section 11173, subdivision (a), in that Respondent
11 diverted Zaleplon from Raley's Pharmacy, as described in paragraphs 22-26, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unlawful Possession of Controlled Substances)

14 28. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j)
15 and (o), and/or 4060, in that he diverted Zaleplon from Raley's Pharmacy without having a valid
16 prescription, and created fraudulent prescriptions for Zaleplon, as described in paragraphs 22-26
17 above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (False Representation)

20 29. Respondent is subject to disciplinary action under Code section 4301, subdivisions (g),
21 (j) and/or (o), and/or Health and Safety Code section 11173, subdivisions (a) and (c), in that he
22 created fraudulent prescriptions, as described in paragraphs 25-26, above.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Unlawful Furnishing of Controlled Substances)

25 30. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j)
26 and/or (o), and/or 4059, subdivision (a), in that Respondent Pharmacist furnished controlled

27 _____
28 ¹ Initials used to maintain patient confidentiality.

1 substances and/or dangerous drugs from pharmacy to himself or another, as described in
2 paragraphs, 25-26, above.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (Failure to Maintain Adequate Security of Controlled Substances)

5 31. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
6 and/or (o), and/or California Code of Regulations, title 16, section 1714, subdivision (d), in that
7 Respondent, while acting as Pharmacist in charge, failed to maintain adequate security at the
8 managed pharmacy, as described in paragraphs 22-26, above.

9 **DISCIPLINARY CONSIDERATIONS**

10 32. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that:

12 a. On or about November 7, 2014, Complainant issued Respondent Citation No. C1
13 2014 63189 for violating Code section 4301, subdivision (g) (knowingly making/signing certificate
14 or document that falsely represents facts-altered controlled substances log to appear balanced
15 owed on two prescriptions were received and dispensed within required 72 hours); Health &
16 Safety Code section 11200, subdivision (c) (refilling Schedule II prescription); and California Code
17 of Regulations, title 16, sections 1714 (violating operational standards- allowing staff to store food
18 in refrigerator with hazardous drugs/vaccines); 1745, subdivision (d) (partial filling of Schedule II
19 prescription); and 1716 (deviating from requirements of a prescription). This citation is now final
20 and is incorporated by reference as if fully stated herein.

21 b. On or about November 28, 2011, Complainant issued Respondent Citation No. C1
22 2011 50404, for violating California Code of Regulations, title 16, section 1711, subdivisions (d),
23 (e) and (f), when Respondent failed to initiate a quality assurance report after the discovery of two
24 medication errors at the pharmacy he was in charge of. This citation is now final and is
25 incorporated by reference as if fully stated herein.

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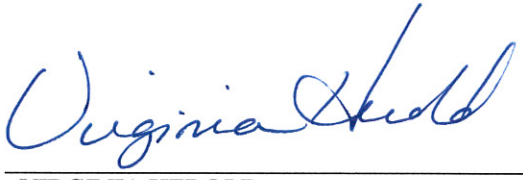
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PRAYER

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 41552, issued to Clive L. Lin;
2. Ordering Clive L. Lin 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: 6/10/16



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

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