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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. 5505

12 **LEINA LE-HO YASUOKA,**
13 **AKA LEINA UYEN LE-HO**
14 **565 S. Parker Street, Unit A**
Orange, CA 92868

A C C U S A T I O N

15 **Pharmacist License No. RPH 63410**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 16, 2009, the Board of Pharmacy issued Pharmacist License
23 Number RPH 63410 to Leina Le-Ho Yasuoka, aka Leina Uyen Le-Ho (Respondent). The
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on July 31, 2017, unless renewed.\

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28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board, whose
8 default has been entered or whose case has been heard by the board and found
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one
13 year.

14 (4) Revoking his or her license.

15 (5) Taking any other action in relation to disciplining him or her as the board
16 in its discretion may deem proper.

17 ...

18 (e) The proceedings under this article shall be conducted in accordance with
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
20 Government Code, and the board shall have all the powers granted therein. The
21 action shall be final, except that the propriety of the action is subject to review by
22 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

23 5. Section 4300.1 of the Code states:

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

STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of
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:

1 ...

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

4 ...

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this
7 chapter or of the applicable federal and state laws and regulations governing
8 pharmacy, including regulations established by the board or by any other state or
9 federal regulatory agency.

10 7. Code section 4306.5 states in part:

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

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

17 ...

18 8. Title 16, California Code of Regulations ("CCR"), section 1716 states:

19 Pharmacists shall not deviate from the requirements of a prescription except upon
20 the prior consent of the prescriber or to select the drug product in accordance with
21 Section 4073 of the Business and Professions Code.

22 Nothing in this regulation is intended to prohibit a pharmacist from exercising
23 commonly-accepted pharmaceutical practice in the compounding or dispensing of a
24 prescription.

25 9. Title 16, CCR, section 1761 states in part:

26 (a) No pharmacist shall compound or dispense any prescription which contains any
27 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon
28 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.

10. Health and Safety Code section 11162.1 states:

(a) The prescription forms for controlled substances shall be printed with the
following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front
of the prescription blank; if a prescription is scanned or photocopied, the word
"void" shall appear in a pattern across the entire front of the prescription.

1 (2) A watermark shall be printed on the backside of the prescription blank;
the watermark shall consist of the words "California Security Prescription."

2 (3) A chemical void protection that prevents alteration by chemical washing.

3 (4) A feature printed in thermochromic ink.

4 (5) An area of opaque writing so that the writing disappears if the
5 prescription is lightened.

6 (6) A description of the security features included on each prescription form.

7 (7) (A) Six quantity check off boxes shall be printed on the form so that
8 the prescriber may indicate the quantity by checking the applicable box where
the following quantities shall appear:

9 1-24

10 25-49

11 50-74

12 75-100

13 101-150

14 151 and over.

15 (B) In conjunction with the quantity boxes, a space shall be provided to
16 designate the units referenced in the quantity boxes when the drug is not in
tablet or capsule form.

17 (8) Prescription blanks shall contain a statement printed on the bottom of the
18 prescription blank that the "Prescription is void if the number of drugs prescribed is
not noted."

19 (9) The preprinted name, category of licensure, license number, federal
20 controlled substance registration number, and address of the prescribing
practitioner.

21 (10) Check boxes shall be printed on the form so that the prescriber may
indicate the number of refills ordered.

22 (11) The date of origin of the prescription.

23 (12) A check box indicating the prescriber's order not to substitute.

24 (13) An identifying number assigned to the approved security printer by the
25 Department of Justice.

26 (14) (A) A check box by the name of each prescriber when a prescription
form lists multiple prescribers.

27 (B) Each prescriber who signs the prescription form shall identify
28 himself or herself as the prescriber by checking the box by his or her name.

1 (b) Each batch of controlled substance prescription forms shall have the lot number
2 printed on the form and each form within that batch shall be numbered sequentially
3 beginning with the numeral one.

4 (c) (1) A prescriber designated by a licensed health care facility, a clinic specified
5 in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25
6 or more physicians or surgeons may order controlled substance prescription forms
7 for use by prescribers when treating patients in that facility without the information
8 required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

9 (2) Forms ordered pursuant to this subdivision shall have the name, category
10 of licensure, license number, and federal controlled substance registration number
11 of the designated prescriber and the name, address, category of licensure, and
12 license number of the licensed health care facility the clinic specified in Section
13 1200, or the clinic specified in Section 1206 that has 25 or more physicians or
14 surgeons preprinted on the form. Licensed health care facilities or clinics exempt
15 under Section 1206 are not required to preprint the category of licensure and
16 license number of their facility or clinic.

17 (3) Forms ordered pursuant to this section shall not be valid prescriptions
18 without the name, category of licensure, license number, and federal controlled
19 substance registration number of the prescriber on the form.

20 (4) (A) Except as provided in subparagraph (B), the designated
21 prescriber shall maintain a record of the prescribers to whom the controlled
22 substance prescription forms are issued, that shall include the name, category
23 of licensure, license number, federal controlled substance registration
24 number, and quantity of controlled substance prescription forms issued to
25 each prescriber. The record shall be maintained in the health facility for three
26 years.

27 (B) Forms ordered pursuant to this subdivision that are printed by a
28 computerized prescription generation system shall not be subject to
subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant
to this subdivision that are printed by a computerized prescription generation
system may contain the prescriber's name, category of professional licensure,
license number, federal controlled substance registration number, and the
date of the prescription.

(d) This section shall become operative on January 1, 2012. Prescription forms not
in compliance with this division shall not be valid or accepted after July 1, 2012.

11. Health and Safety Code section 11164 states:

Except as provided in Section 11167, no person shall prescribe a controlled
substance, nor shall any person fill, compound, or dispense a prescription for a
controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or
V, except as authorized by subdivision (b), shall be made on a controlled substance
prescription form as specified in Section 11162.1 and shall meet the following
requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and
shall contain the prescriber's address and telephone number; the name of the
ultimate user or research subject, or contact information as determined by the

1 Secretary of the United States Department of Health and Human Services; refill
2 information, such as the number of refills ordered and whether the prescription is a
3 first-time request or a refill; and the name, quantity, strength, and directions for use
4 of the controlled substance prescribed.

5 (2) The prescription shall also contain the address of the person for whom the
6 controlled substance is prescribed. If the prescriber does not specify this address on
7 the prescription, the pharmacist filling the prescription or an employee acting under
8 the direction of the pharmacist shall write or type the address on the prescription or
9 maintain this information in a readily retrievable form in the pharmacy.

10 (b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any
11 controlled substance classified in Schedule III, IV, or V may be dispensed upon an
12 oral or electronically transmitted prescription, which shall be produced in hard copy
13 form and signed and dated by the pharmacist filling the prescription or by any other
14 person expressly authorized by provisions of the Business and Professions Code.
15 Any person who transmits, maintains, or receives any electronically transmitted
16 prescription shall ensure the security, integrity, authority, and confidentiality of the
17 prescription.

18 (2) The date of issue of the prescription and all the information required for a
19 written prescription by subdivision (a) shall be included in the written record of the
20 prescription; the pharmacist need not include the address, telephone number, license
21 classification, or federal registry number of the prescriber or the address of the
22 patient on the hard copy, if that information is readily retrievable in the pharmacy.

23 (3) Pursuant to an authorization of the prescriber, any agent of the prescriber
24 on behalf of the prescriber may orally or electronically transmit a prescription for a
25 controlled substance classified in Schedule III, IV, or V, if in these cases the written
26 record of the prescription required by this subdivision specifies the name of the
27 agent of the prescriber transmitting the prescription.

28 (c) The use of commonly used abbreviations shall not invalidate an otherwise valid
prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a
controlled substance classified in Schedule V may be for more than one person in
the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

12. Health and Safety Code section 11167 states:

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to
issue a prescription may result in loss of life or intense suffering, an order for a
controlled substance may be dispensed on an oral order, an electronic data
transmission order, or a written order not made on a controlled substance form as
specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy
reduces any oral or electronic data transmission order to hard copy form prior to
dispensing the controlled substance.

1 (c) The prescriber provides a written prescription on a controlled substance
2 prescription form that meets the requirements of Section 11162.1, by the seventh
day following the transmission of the initial order; a postmark by the seventh day
following transmission of the initial order shall constitute compliance.

3 (d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so
4 notify the Department of Justice in writing within 144 hours of the prescriber's
5 failure to do so and shall make and retain a hard copy, readily retrievable record of
the prescription, including the date and method of notification of the Department of
Justice.

6 (e) This section shall become operative on January 1, 2005.

7 COST RECOVERY

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

14 DRUGS

15 14. Duragesic patch, a brand name for fentanyl patch, is a Schedule II controlled substance
16 pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant
17 to Business and Professions Code section 4022. It is used to manage severe, chronic pain.

18 FACTS

19 15. On February 22, 2011, R.M., an 88-year old female was transferred to a skilled
20 nursing facility after a hospital stay for evaluation. R.M. had been diagnosed with acute
21 myocardial infarction and left femoral artery occlusion with left foot gangrene, among other things.
22 R.M. was terminal and was on comfort measures only.

23 16. R.M. was medicated with Roxanol 2mg – 4mg every 4 hours as needed since February
24 22, 2011. This dose is equivalent to 25 mcg Duragesic patch.

25 17. On March 11, 2011, R.M.'s physician wrote a new order for Roxanol 4 mg SL every 6
26 hours with specific orders to hold the medication if R.M.'s respiratory rate fell below 8 breaths per
27 minute. The physician also wrote an order for Duragesic patch 12.5 mcg every 72 hours to the
28 chest wall.

1 18. On or about March 11, 2011, Respondent, a pharmacist at Senior Care Pharmacy
2 Services, Inc., received a faxed medication order from the facility for R.M. The medication order
3 was not on a controlled substance prescription form pursuant to the requirements of Health and
4 Safety Code section 11162.1, nor did it contain the prescriber's address and telephone number and
5 the address of the person for whom the controlled substance is prescribed, among other things.

6 19. Respondent dispensed five patches of Duragesic 75 mcg and five patches of Duragesic
7 50 mcg total five doses of 125 mcg Duragesic patch for R.M. Duragesic patches come in doses of
8 12.5 mcg, 25 mcg, 50 mcg, 75 mcg and 100 mcg per patch. The appropriate dose for R.M. should
9 not exceed 25 mcg. Respondent failed to contact the prescribing physician to verify the dose of
10 Duragesic patch. According to Respondent, a pharmacy technician at Senior Care Pharmacy
11 Services, Inc. contacted a nurse at the facility and verified the medication order. The facility has
12 no documentation of a call from Respondent or anyone at Senior Care Pharmacy Services, Inc. to
13 clarify the medication order.

14 20. R.M. was administered Duragesic patch at 9:00 a.m. on March 12, 2011. R.M.
15 experience difficulty breathing and eventually stopped breathing. R.M. was pronounced dead at
16 2:25 p.m. on March 13, 2011.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Variation from Prescription)**

19 21. Respondent is subject to disciplinary action under Code section 4301(o) for violating
20 title 16, California Code of Regulations, section 1716, in that on or about March 11, 2011, while
21 Respondent was on duty at Senior Care Pharmacy, Senior Care Pharmacy dispensed a total of 125
22 mcg Duragesic patch instead of 12.5 mcg Duragesic patch to R.M., as more fully set forth in
23 paragraphs 15 – 20 above and incorporated herein.

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25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Erroneous or Uncertain Prescription)**

27 22. Respondent is subject to disciplinary action under Code section 4301(o) for violating
28 title 16, California Code of Regulations, section 1761, subdivision (a), in that on or about March

1 11, 2011, while Respondent was on duty at Senior Care Pharmacy, Respondent failed to note the
2 irregularity of a medication order for 125 mcg Duragesic patch and failed to contact the prescriber
3 to validate the prescription prior to dispensing a total of 125 mcg Duragesic patch to R.M, as more
4 fully set forth in paragraphs 15 – 20 above and incorporated herein.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Inappropriate Exercise**
7 **of Professional Training, Education, Experience)**

8 23. Respondent is subject to disciplinary action under Code section 4306.5 for acts or
9 omissions that involve the inappropriate exercise of her education, training, or experience as a
10 pharmacist, in that on or about March 11, 2011, while Respondent was on duty at Senior Care
11 Pharmacy, Respondent failed to note the irregularity of a medication order for 125 mcg Duragesic
12 patch and failed to contact the prescriber to validate the prescription prior to dispensing a total of
13 125 mcg Duragesic patch to R.M, as more fully set forth in paragraphs 15 – 20 above and
14 incorporated herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Dispensed Controlled Substance Pursuant to Noncompliance Prescription)**

17 24. Respondent is subject to disciplinary action under Code section 4301(j) for violating
18 California Health and Safety Code section 11164 in that on or about March 11, 2011, Respondent
19 dispensed Duragesic patch, a Schedule II controlled substance, pursuant to a prescription that
20 failed to comply with the requirements of Health and Safety Code sections 11162.1 and 11164, ,
21 as more fully set forth in paragraphs 15 – 20 above and incorporated herein.

22 **PRAYER**

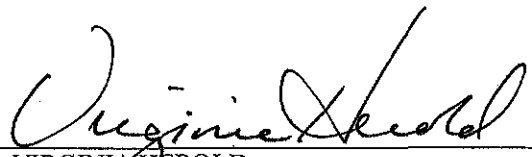
23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Pharmacy issue a decision:

25 1. Revoking or suspending Pharmacist License Number RPH 63410, issued to Leina Le-
26 Ho Yasuoka, aka Leina Uyen Le-Ho;

- 1 2. Ordering Leina Le-Ho Yasuoka to pay the Board of Pharmacy the reasonable costs of
- 2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
- 3 125.3; and,
- 4 3. Taking such other and further action as deemed necessary and proper.

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DATED: 10/5/15



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

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