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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 5516

12 **SAFEWAY PHARMACY #2940**
13 **11450 San Pablo Avenue**
El Cerrito, CA 94530

A C C U S A T I O N

14 **Pharmacy License No. PHY 52250**
15 **Pharmacy License No. PHY 46760 (Cancelled 1/30/15)**

16 **and**

17 **AYESHA NIEMA DIXON**
18 **907 Barrett Ave.**
19 **Richmond, CA 94801**

20 **Pharmacy Technician Registration No. TCH 53272**

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about April 9, 2004, the Board issued Pharmacy License Number PHY 46760
28 to Safeway Pharmacy (Respondent Pharmacy). The Pharmacy License was in full force and effect

1 at all times relevant to the charges brought herein and was cancelled on January 30, 2015, and has
2 not been renewed.

3 3. On or about January 30, 2015, the Board issued Pharmacy License Number PHY
4 52250 to Respondent Pharmacy. The Pharmacy License Number was in full force and effect at all
5 times relevant to the charges brought herein and will expire on January 1, 2017, unless renewed.

6 4. On or about December 26, 2003, the Board issued Pharmacy Technician Registration
7 Number TCH 53272 to Ayesha Niema Dixon (Respondent Technician). The Pharmacy Technician
8 Registration was in full force and effect at all times relevant to the charges brought herein and will
9 expire on March 31, 2017, unless renewed.

10 JURISDICTION

11 5. This Accusation is brought before the Board under the authority of the following laws.
12 All section references are to the Business and Professions Code unless otherwise indicated.

13 6. Business and Professions Code (Code) section 4300 provides that every license issued
14 by the Board may be suspended or revoked.

15 7. Code section 4300.1 states:

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

21 STATUTORY AND REGULATORY PROVISIONS

22 8. Code section 4059 states:

23 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
25 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
27 3640.7.

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"(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.

"...

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

"...

"(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.

"..."

12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

13. California Code of Regulations, title 16, section 1714, provides, in pertinent part:

"..."

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

"..."

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

14. Code section 4021 states:

"Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

///

1 15. Code section 4022 states:

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

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

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

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

11 16. Soma is a brand name for carisprodol, a dangerous drug as designated by Code section
12 4022. Since January 11, 2012, carisprodol has been a Schedule IV controlled substance at the
13 federal level (21 C.F.R. § 1308.14(c)(6)). It is a depressant drug.

14 17. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for
15 compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III
16 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
17 drug as designated by Business and Professions Code section 4022. The varying compounds are
18 also known generically as hydrocodone with APAP. These are all narcotic drugs. Products like
19 these that combine hydrocodone with non-controlled substances are also called hydrocodone
20 combination products. Effective October 6, 2014, hydrocodone combination productions were
21 switched at the federal level from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to
22 Schedule II (21 C.F.R. § 1308.12(b)(1)). This includes hydrocodone with APAP drugs.

23 18. Phenergan with codeine is a brand name for a compound consisting of the
24 antihistamine promethazine, a dangerous drug as designated by Code section 4022, and codeine, a
25 Schedule V controlled substance as designated by Health and Safety Code section 11058 and a
26 dangerous drug as designated by Code section 4022. This drug is also known generically as
27 promethazine with codeine. It is an antihistamine/antitussive, a narcotic analgesic, and a sleep
28 aid.

1 COST RECOVERY

2 19. Code section 125.3 states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 FACTUAL BACKGROUND

7 20. On or about August 14, 2014, a Board Inspector inspected Respondent Pharmacy
8 after receiving a letter from the pharmacist-in-charge indicating a loss of controlled substances at
9 Respondent Pharmacy. The Inspector discovered the following:

10 a. Shortages of the following controlled substances between May 2013 and May 2014:

- 11 1. Promethazine w/ codeine: 6,088 ml;
12 2. Carisprodol: 4,195 tablets (350 mg);
13 3. Hydrocodone w/APAP: 22, 410 tablets (10/325 mg); 992 tablets (5/325 mg).

14 b. Respondent Pharmacy's video surveillance footage from May 2, 2014 and May 6,
15 2014, showed Respondent Technician taking bottles of promethazine w/codeine from Respondent
16 Pharmacy without permission.

17 21. Respondent Technician resigned from her position on May 16, 2014.

18
19 Respondent Safeway Pharmacy

20 FIRST CAUSE FOR DISCIPLINE

21 (Failure to Maintain Controlled Substances in Safe and Secure Manner)

22 22. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,
23 subdivisions (j) and/or (o), and/or California Code of Regulations, title 16, section 1714,
24 subdivision (b), in that it failed to ensure the security of its controlled substance and dangerous
25 drug stock against employee pilferage, as described in paragraph 20, above.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Have Records of Acquisition and Disposition)

3 23. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,
4 subdivisions (j) and/or (o), and/or 4081, subdivision (a), in that, due to the shortage, Respondent
5 Pharmacy's records of disposition were inaccurate or incomplete.

6
7 Respondent Ayesha Niema Dixon

8 THIRD CAUSE FOR DISCIPLINE

9 (Furnishing Dangerous Drugs Without Prescription)

10 24. Respondent Technician is subject to disciplinary action under Code sections 4301,
11 subdivisions (j) and/or (o), and/or 4059, subdivision (a), in that Respondent Technician furnished
12 controlled substances and/or dangerous drugs from Respondent Pharmacy to herself or another, as
13 described in paragraph 20, above.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substances)

16 25. Respondent Technician is subject to disciplinary action under Code sections 4060
17 and/or 4301, subdivisions (j) and/or (o), and/or Health and Safety Code section 11350, in that she
18 possessed, conspired to possess, and/or assisted in or abetted possession of a controlled substances
19 without a prescription, as described in paragraph 20, above.

20 FIFTH CAUSE FOR DISCIPLINE

21 (Dishonesty)

22 26. Respondent Technician is subject to disciplinary action under Code section 4301,
23 subdivisions (f), (j) and/or (o), in that Respondent Technician committed a dishonest act when she
24 pilfered controlled substances from Respondent Pharmacy, as described in paragraph 20, above.

25 SIXTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 27. Respondent Technician is subject to discipline under Code section 4301 in that she
28 engaged in unprofessional conduct, as described in paragraph 20, above.

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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 Original Pharmacy License Number PHY 46760, issued to Safeway Pharmacy #2940 (Respondent Pharmacy);
2. Revoking or suspending Original Pharmacy License Number PHY 52250, issued to Respondent Pharmacy;
3. Revoking or suspending Pharmacy Technician Registration Number TCH 53272, issued to Ayesha Niema Dixon (Respondent Technician);
4. Ordering Respondents 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; and
5. Taking such other and further action as deemed necessary and proper.

DATED: _____

10/14/16

Virginia Herold

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

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