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| 7 8 9 | BEFORE THE BOARD OF PHARMA DEPARTMENT OF CONSUM | ER AFFAIRS |
| 9 10 | STATE OF CALIFOR | NIA |
| 11 | In the Matter of the Accusation Against: | Case No. 5516 |
| 12 | SAFEWAY PHARMACY #2940 | ACCUSATION |
| 13 | 11450 San Pablo Avenue El Cerrito, CA 94530 | |
| 14 15 | Pharmacy License No. PHY 52250 Pharmacy License No. PHY 46760 (Cancelled 1/30/15) | |
| 16 | and | |
| 17 18 19 | AYESHA NIEMA DIXON 907 Barrett Ave. Richmond, CA 94801 | ÷ |
| 20 | Pharmacy Technician Registration No. TCH 53272 | |
| 21 | Respondents. | |
| 22 | | |
| 23 | Complainant alleges: | |
| 24 | <u>PARTIES</u> | |
| 25 | 1. Virginia Herold (Complainant) brings this Accu | sation solely in her official capacity as |
| 26 | the Executive Officer of the Board of Pharmacy (Board), D | epartment of Consumer Affairs. |
| 27 | 2. On or about April 9, 2004, the Board issued Ph | armacy License Number PHY 46760 |
| 28 | to Safeway Pharmacy (Respondent Pharmacy). The Pharma | acy License was in full force and effect |
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| | (SAFEWAY PHARMACY ar | d AYESHA NIEMA DIXON) ACCUSATION |

| 1 | at all times relevant to the charges brought herein and was cancelled on January 30, 2015, and has |
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| 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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9. Code section 4060 states:

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| 1 | 3. Code section too states. |
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| 2 | "A person shall not possess any controlled substance, except that furnished to a person upon |
| 3 | the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor |
| 4 | pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse- |
| 5 | midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician |
| 6 | assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a |
| 7 | pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the |
| 8 | possession of any controlled substance by a manufacturer, wholesaler, third-party logistics |
| 9 | provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, |
| 10 | naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock |
| 11 | in containers correctly labeled with the name and address of the supplier or producer. |
| 12 | "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician |
| 13 | assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices." |
| 14 | 10. Code section 4081 states: |
| 15 | "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or |
| 16 | dangerous devices shall be at all times during business hours open to inspection by authorized |
| 17 | officers of the law, and shall be preserved for at least three years from the date of making. A |
| 18 | current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary |
| 19 | food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, |
| 20 | institution, or establishment holding a currently valid and unrevoked certificate, license, permit, |
| 21 | registration, or exemption under Division 2 (commencing with Section 1200) of the Health and |
| 22 | Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and |
| 23 | Institutions Code who maintains a stock of dangerous drugs or dangerous devices. |
| 24 | 11 ¹¹ |
| 25 | 11. Code section 4301 states: |
| 26 | "The board shall take action against any holder of a license who is guilty of unprofessional |
| 27 | conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. |
| 28 | Unprofessional conduct shall include, but is not limited to, any of the following: |
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| | (SAFEWAY PHARMACY and AYESHA NIEMA DIXON) ACCUSATION |

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| 2 | "(f)The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or |
| 3 | corruption, whether the act is committed in the course of relations as a licensee or otherwise, and |
| 4 | whether the act is a felony or misdemeanor or not. |
| 5 | lt |
| 6 | "(j) The violation of any of the statutes of this state, of any other state, or of the United |
| 7 | States regulating controlled substances and dangerous drugs. |
| 8 | " |
| 9 | "(0) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the |
| 10 | violation of or conspiring to violate any provision or term of this chapter or of the applicable |
| 11 | federal and state laws and regulations governing pharmacy, including regulations established by the |
| 12 | board or by any other state or federal regulatory agency. |
| 13 | 11 |
| 14 | 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess |
| 15 | any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision |
| 16 | (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription. |
| 17 | 13. California Code of Regulations, title 16, section 1714, provides, in pertinent part: |
| 18 | n ••• |
| 19 | "(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and |
| 20 | equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The |
| 21 | pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of |
| 22 | pharmacy. |
| 23 | 11 11 • • • |
| 24 | CONTROLLED SUBSTANCES/DANGEROUS DRUGS |
| 25 | 14. Code section 4021 states: |
| 26 | ""Controlled substance" means any substance listed in Chapter 2 (commencing with Section |
| 27 | 11053) of Division 10 of the Health and Safety Code." |
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15. Code section 4022 states:

| 1 | 15. Code section 4022 states: | |
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| 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. | |
| | 5 | |

| 1 | | COST RECOVERY |
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| 2 | 19. | Code section 125.3 states, in pertinent part, that the Board may request the |
| 3 | administra | tive law judge to direct a licentiate found to have committed a violation or violations of |
| 4 | the licensi | ng act to pay a sum not to exceed the reasonable costs of the investigation and |
| 5 | enforceme | nt of the case. |
| 6 | | FACTUAL BACKGROUND |
| 7 | 20. | On or about August 14, 2014, a Board Inspector inspected Respondent Pharmacy |
| 8 | after receiv | ving a letter from the pharmacist-in-charge indicating a loss of controlled substances at |
| 9 | Responder | nt 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, shov | wed 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 | subdivisio | ns (j) and/or (o), and/or California Code of Regulations, title 16, section 1714, |
| 24 | subdivision | n (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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| | | (SAFEWAY PHARMACY and AYESHA NIEMA DIXON) ACCUSATION |

| 1 | SECOND CAUSE FOR DISCIPLINE |
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| 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 | <u>Respondent Ayesha Niema Dixon</u> |
| 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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| | (SAFEWAY PHARMACY and AYESHA NIEMA DIXON) ACCUSATION |

| 1 | PRAYER |
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| 2 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 3 | and that following the hearing, the Board of Pharmacy issue a decision: |
| 4 | 1. Revoking or suspending Original Pharmacy License Number PHY 46760, issued to |
| 5 | Safeway Pharmacy #2940 (Respondent Pharmacy); |
| 6 | 2. Revoking or suspending Original Pharmacy License Number PHY 52250, issued to |
| 7 | Respondent Pharmacy; |
| 8 | 3. Revoking or suspending Pharmacy Technician Registration Number TCH 53272, |
| 9 | issued to Ayesha Niema Dixon (Respondent Technician); |
| 10 | 4. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the |
| 11 | investigation and enforcement of this case, pursuant to Business and Professions Code section |
| 12 | 125.3; and |
| 13 | 5. Taking such other and further action as deemed necessary and proper. |
| 14 | |
| 15 16 | DATED: 10/14/16 Diginia Level |
| 17 | VIRGINIA HEROLD Executive Officer |
| 18 | Board of Pharmacy Department of Consumer Affairs |
| 19 | State of California Complainant |
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| | (SAFEWAY PHARMACY and AYESHA NIEMA DIXON) ACCUSATION |

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