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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **VONS CORPORATION DBA VONS PHARMACY 2406** **750 North Imperial Avenue** **El Centro, CA 92243** **Pharmacy Permit No. PHY 43000 (Change of Ownership to Pharmacy Permit No. 52136)** **and** **YOUNG JU WOO** **13876 Kerry Lane** **San Diego, CA 92130** **Pharmacist License No. 56562** **and** **ROGELIO VEGA** **P.O. Box 924** **Calipatria, CA 92233** **Pharmacy Technician Registration No. TCH 55763** Respondents.	Case No. 5554 **A C C U S A T I O N**

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Complainant alleges:

PARTIES

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

2. On or about August 25, 1997, the Board of Pharmacy issued Pharmacy Permit Number PHY 43000 to Vons Corporation to do business as Vons Pharmacy 2406 (Respondent Vons). The Pharmacy Permit was cancelled on April 17, 2015 pursuant to a change of ownership.

3. On or about November 8, 2004, the Board of Pharmacy issued Pharmacist License Number RPH 56562 to Young Ju Woo (Respondent Woo). Woo was the Pharmacist-in-Charge of Vons from July 18, 2010 through June 23, 2014. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2016, unless renewed.

4. On or about March 29, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 55763 to Rogelio A. Vega (Respondent Vega). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2017, unless renewed.

JURISDICTION

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

6. Section 4300 of the Code states:

> (a) Every license issued may be suspended or revoked.
>
> (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
>
> (1) Suspending judgment.
>
> (2) Placing him or her upon probation.
>
> (3) Suspending his or her right to practice for a period not exceeing one year.

(4) Revoking his or her license.

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

...

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

7. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

STATUTORY AND REGULATORY PROVISIONS

8. 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:

...

(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.

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

...

(j) The violation of any of the statutes of this state, or 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.

...

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

...

9. Section 4022 of the Code states:

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

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

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

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

10. Section 4059 of the Code states in part:

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

...

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

12. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three

years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

13. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

...

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved if the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

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14. Title 16, California Code of Regulations (CCR), section 1714 states in 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.

...

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

...

15. Title 16, CCR, section 1718 states:

Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

16. Health and Safety Code section 11350 states in part:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

...

17. Health and Safety Code section 11351 states:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any

controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

COST RECOVERY

18. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DRUGS

19. Hydrocodone with acetaminophen, sold under the brand names Norco and Vicodin, was a Schedule III controlled substance as designated by Health and Safety Code section 11055(b)(1)(l) at the times pertinent to this Accusation and is currently classified a Schedule II controlled substance pursuant to Health and Safety Code section 11056(e)(4). It is a dangerous drug pursuant to Business and Professions Code section 4022. It is used for the relief of pain.

FACTS

20. On or about December 5, 2013, the Board was notified that Respondent Vega, a Pharmacy Technician, was terminated from his employment by Respondent Vons for theft of hydrocodone in 2013.

21. Respondent Vons became aware of the theft after being notified of the discrepancy between the amount of hydrocodone/apap 10/325 purchased by the pharmacy and the amount dispensed. The pharmacy conducted an investigation that revealed an unusual amount of inventory adjustments for hydrocodone between January 1, 2013 and November 1, 2013. All the adjustments were negative adjustments that reduced the inventory of hydrocodone by 34,642 pills. The adjustments were made using Vega's unique password and were made when Vega was scheduled to work. Vega made the inventory adjustments to hide his theft.

22. After making inventory adjustments to cover his thefts, Vega admitted that he placed the stolen tablets into his smock and exited the pharmacy. Vega sold the stolen tablets for $1.00

per tablet for financial gain. Later, when interviewed by a Board inspector, Vega admitted to stealing only insulin and antibiotics from the pharmacy for his personal use.

23. On or about January 23, 2014, the Board received documents from Respondents Woo and Vons in response to the Board's request for more information. Woo and Vons reported the loss of 14,967 tablets of hydrocodone 5mg/apap; 9,977 tablets of hydrocodone 7.5mg/apap; and 180,459 tablets of hydrocodone 10mg/apap. Respondents also provided an audit for the period May 1, 2010 to December 30, 2013 that showed the shortages above but failed to identify the specific strengths of tablets lost. In addition, the audit did not include a beginning inventory on May 1, 2010 and Respondents did not perform an ending inventory on December 30, 2013.

24. Vega's theft of hydrocodone accounted for the loss of 34,642 tablets between January 1, 2013 and November 1, 2013. However, Respondents reported the loss of 14,967 tablets of hydrocodone 5mg/apap; 9,977 tablets of hydrocodone 7.5mg/apap; and 180,459 tablets of hydrocodone 10mg/apap. Respondents attributed the rest of the loss to a "flurry of robberies and other activity both internal and external" without further explanation.

25. A Board inspector conducted an inspection of the pharmacy on May 29, 2014. Because of the lack of a beginning inventory and accurate ending inventory, the Board inspector performed an audit for the period May 1, 2010 to May 1, 2013 from documents provided by Woo and Vons for hydrocodone/apap in four strengths: 10/325, 5/500, 5/325 and 7.5/750. However, a beginning inventory was not available to the Board inspector. This audit showed:

Hydrocodone/ apap strength	**Beginning Inventory**	**Acquisition Until 5/1/2013**	**Dispo. Until 5/1/2013**	**On hand 5/1/2013**	**Expected**	**Variance**
7.5/750mg	N/A	31,720	25,395	170	6325	-6155
10/325mg	N/A	190,891	103,677	480	87,214	-86,734
5/500mg	N/A	300,895	199,845	520	1049	-529
5/325mg	N/A	20,525	20,300	480	225	255

26. Because of the lack of a starting inventory, the Board inspector requested that Respondents perform an audit with actual beginning and ending inventories for hydrocodone/apap 10/325 and 5/325 for the period May 1, 2013 through May 29, 2014. The beginning inventory was obtained from the DEA inventory on May 1, 2013 and the ending inventory was taken from

the stock on hand on the day of the Board's inspection. Respondents' audit showed a loss of controlled substances:

Drug	Beginning inventory 5/1/2013	Acquisition	Disposition	Ending inventory 5/29/2014	Variance
Hydrocodone/apap 10/325mg	480	75,000	53,323	2,785	-19,372
Hydrocodone/apap 5/325mg	480	47,700	46,226	1,477	-477

FIRST CAUSE FOR DISCIPLINE

AS TO VONS PHARMACY 2406 AND YOUNG JU WOO

(Failure to Maintain Pharmacy Security)

27. Respondents are subject to disciplinary action under Code section 4301(o) for violating title 16, CCR, 1714, subdivisions (b) and (d) for failing to provide effective control against theft or diversion of dangerous drugs in that Respondents failed to protect against the theft of approximately 34,000 tablets hydrocodone/apap between January 1, 2013 and November 1, 2013, the loss of 19,372 tablets of hydrocodone/apap 10/325mg and 477 tablets of hydrocodone/apap 5/325mg between May 1, 2013 and May 29, 2014, and the reported loss of 180,459 tablets of hydrocodone 10mg/apap, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

SECOND CAUSE FOR DISCIPLINE

AS TO VONS PHARMACY 2406 AND YOUNG JU WOO

(Failure to Maintain Records of Acquisition and Disposition)

28. Respondents are subject to disciplinary action under Code section 4301(o) for violating Code sections 4081 and 4105 in that Respondents failed to maintain a current inventory such that an accurate count of the loss of hydrocodone/apap could not be determined for the periods May 1, 2010 through December 30, 2013 and May 1, 2010 through May 1, 2013, although all of the audits showed a loss of hydrocodone/apap, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

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THIRD CAUSE FOR DISCIPLINE

AS TO ROGELIO VEGA ONLY

(Unlawful Possession of Controlled Substances)

29. Respondent Vega is subject to disciplinary action under Code section 4060 in conjunction with Health and Safety Code section 11350 for unlawfully possessing controlled substances in that Respondent Vega, while employed at Vons Pharmacy 2406 stole approximately 34,000 tablets of hydrocodone/apap, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

FOURTH CAUSE FOR DISCIPLINE

AS TO ROGELIO VEGA ONLY

(Unlawful Furnishing of Controlled Substances)

30. Respondent Vega is subject to disciplinary action under Code section 4059 for unlawfully furnishing controlled substances in that Respondent Vega, while employed at Vons Pharmacy 2406 furnished hydrocodone/apap to himself and others when he stole approximately 34,000 tablets of hydrocodone/apap, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

FIFTH CAUSE FOR DISCIPLINE

AS TO ROGELIO VEGA ONLY

(Unlawful Possession of Controlled Substances for Sale)

31. Respondent Vega is subject to disciplinary action under Code section 4301 subdivisions (j) and/or (o) in conjunction with Health and Safety Code section 11351 for unlawfully possessing controlled substances for sale in that Respondent Vega, while employed at Vons Pharmacy 2406 stole approximately 34,000 tablets of hydrocodone/apap and sold the tablets, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

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SIXTH CAUSE FOR DISCIPLINE

AS TO ROGELIO VEGA ONLY

(Committing Acts Involving Dishonesty, Fraud or Deceit)

32. Respondent Vega is subject to disciplinary action under Code section 4301, subdivision (f) for committing acts involving dishonesty, fraud or deceit in that Respondent Vega, while employed at Vons Pharmacy 2406, stole approximately 34,000 tablets of hydrocodone/apap and made false adjustments to the pharmacy's records to cover up his theft, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

SEVENTH CAUSE FOR DISCIPLINE

AS TO ROGELIO VEGA ONLY

(Subverting Investigation and Signing a False Document)

33. Respondent Vega is subject to disciplinary action under Code section 4301, subdivisions (q) and (g) for attempting to subvert an investigation of the Board and knowingly making or signing a false document. The circumstances are as follows.

34. Respondent Vega informed the Board inspector that he never stole medications containing hydrocodone from Vons Pharmacy 2406 and signed a statement indicating the only products he had taken from Vons 2406 were insulin and antibiotics. However, Respondent Vega admitted to the theft of hydrocodone to a Vons loss prevention employee and signed a statement that he stole hydrocodone, as more fully set forth in paragraphs 20 – 26 above and incorporated by this reference as though set forth in full herein.

DISCIPLINE CONSIDERATIONS

35. To determine the degree of discipline, if any, to be imposed on Respondent Vons Pharmacy 2406, Complainant alleges that on or about January 15, 2015, in a prior action, the Board of Pharmacy issued Citation Number CI 2013 61625 to Vons Pharmacy for a medication error in violation of title 16, CCR, section 1716. This Citation is now final and is incorporated by reference as if fully set forth.

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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 Pharmacy Permit Number PHY 43000, issued to Vons Corporation, dba Vons Pharmacy 2406;

2. Revoking or suspending Pharmacist License 56562 issued to Young Ju Woo;

3. Revoking or suspending Pharmacy Technician Registration Number TCH 55763 issued to Rogelio A. Vega;

4. Ordering Vons Corporation, dba Vons Pharmacy 2406, Young Ju Woo and Rogelio A. Vega, jointly and severally, 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: 6/13/16

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

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