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

10 In the Matter of the Accusation Against:

Case No. 5565

11 **FAIRFAX DISCOUNT PHARMACY INC.**
12 **dba FAIRFAX DISCOUNT PHARMACY,**
13 **BORIS GOROKHOVSKY, OWNER**
7771 Beverly Blvd
14 Los Angeles, CA 90036

A C C U S A T I O N

15 Permit No. PHY 50390

16 **AND**

17 **STANLEY POTASH**
10373 Tennessee Avenue
18 Los Angeles, CA 90064

19 Pharmacist License No. RPH 19744

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about September 22, 2010, the Board of Pharmacy issued Permit Number PHY
27 50390 to Fairfax Discount Pharmacy Inc. dba Fairfax Discount Pharmacy, a corporation, with
28 Boris Gorokhovskiy as president and 100% owner (Respondent Pharmacy). The Permit was in

1 full force and effect at all times relevant to the charges brought herein and will expire on
2 September 1, 2017, unless renewed.

3 3. On or about July 23, 1955, the Board of Pharmacy issued Pharmacist License
4 Number RPH 19744 issued to Stanley Potash (Respondent Potash). The Pharmacist License was
5 in full force and effect at all times relevant to the charges brought herein and will expire on May
6 31, 2017, unless renewed.

7 4. Continuously since on or about September 22, 2010 and at all times relevant herein,
8 Respondent Stanley Potash was the registered Pharmacist in Charge of Respondent Pharmacy.

9 JURISDICTION

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

13 6. Section **4022** of the Code states

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

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

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

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

23 7. Section **4081** of the Code states:

24 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
25 or dangerous devices shall be at all times during business hours open to inspection by authorized
26 officers of the law, and shall be preserved for at least three years from the date of making. A
27 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
28 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,

1 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
2 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
3 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
4 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

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

12 8. Section 4300 of the Code states:

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

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

17 "(1) Suspending judgment.

18 "(2) Placing him or her upon probation.

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

20 "(4) Revoking his or her license.

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

23 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
24 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
25 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
26 may issue the license subject to any terms or conditions not contrary to public policy, including,
27 but not limited to, the following:

28 "(1) Medical or psychiatric evaluation.

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"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(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."

9. 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."

10. 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . .

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

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

6 . . .

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

9 . . .

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

14 (p) Actions or conduct that would have warranted denial of a license.

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

17 . . .

18 11. Section 4105 of the Code states:

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

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

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

27 (d) Any records that are maintained electronically shall be maintained so that the
28 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the

1 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on
2 duty, shall, at all times during which the licensed premises are open for business, be able to
3 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug
4 or dispensing-related records maintained electronically.

5 "(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request,
6 grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b),
7 and (c) be kept on the licensed premises.

8 (2) A waiver granted pursuant to this subdivision shall not affect the board's authority
9 under this section or any other provision of this chapter."

10 3. California Code of Regulations, title 16, section 1715. (Self-Assessment of a
11 Pharmacy by the Pharmacist-in-Charge) states:

12 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section
13 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's
14 compliance with federal and state pharmacy law. The assessment shall be performed before July 1
15 of every odd-numbered year. The primary purpose of the self-assessment is to promote
16 compliance through self-examination and education.

17 (b) In addition to the self-assessment required in subdivision (a) of this section, the
18 pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

19 (1) A new pharmacy permit has been issued, or

20 (2) There is a change in the pharmacist-in-charge, and he or she becomes the new
21 pharmacist-in-charge of a pharmacy.

22 (3) There is a change in the licensed location of a pharmacy to a new address.

23 (c) The components of this assessment shall be on Form 17M-13 (Rev. 01/11) entitled
24 "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" and on
25 Form 17M-14 (Rev. 01/11) entitled "Hospital Pharmacy Self-Assessment" which are hereby
26 incorporated by reference to evaluate compliance with federal and state laws and regulations.

27 (d) Each self-assessment shall be kept on file in the pharmacy for three years after it is
28 performed.

Drug	Purchased	Dispensed	Difference
Effient 10mg	1,440	1,920	480
Nitrolingual Pumpspray ¹	1,692	3,144	1,452
Ranexa 500mg	6,960	9,330	2,370
Victoza	168	348	180

The Inspector noted that, since there were over 1,800 prescriptions dispensed for Voltaren Gel and the pharmacy software was unable to calculate the total quantities dispensed, an audit of Voltaren Gel was not conducted.

h. In a letter dated 12/12/14, Respondent Gorokhovsky stated he was unable to explain the cause of the short fall, but that he believed the cause was negligence and not any intentional act.

FIRST CAUSE FOR DISCIPLINE

(Failed to Comply With Self Assessment Form Requirements)

16. Respondents are subject to disciplinary action under Code section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, Title 16, section 1715, subdivision (a) (which requires that a pharmacy must complete a new self-assessment form before July 1 or every odd numbered year) in that during a Board inspection on or about October 14, 2014, Respondents were unable to produce a current, properly completed self assessment form.

SECOND CAUSE FOR DISCIPLINE

(Falsification of Document)

17. Respondents are subject to disciplinary action under Code section 4300 for unprofessional conduct as defined in section 4301, subdivisions (g) in conjunction with California Code of Regulations, Title 16, section 1715, subdivision (a) (which requires that a pharmacy must complete a new self-assessment form before July 1 or every odd numbered year) in that following a Board inspection on or about October 14, 2014, Respondents faxed a document indicating to the

¹ Only "brand name" (vs. generic) Nitrolingual Pumpspray was included in the audit.

1 Board that they had completed a self-assessment. In fact, no actual self-assessment had been
2 completed. Rather - the document faxed was an earlier assessment with the date altered to suggest
3 timely compliance.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty, Fraud, or Deceit)**

6 18. Respondents are subject to disciplinary action under Code section 4301, subdivision
7 (f), in that Respondents committed acts involving dishonesty, fraud, or deceit with the intent to
8 substantially benefit himself, or substantially injure another, as follows: Following a Board
9 inspection on or about October 14, 2014, Respondents faxed a document indicating to the Board
10 that they had completed a self-assessment. In fact no actual self-assessment had been completed.
11 Rather - the document faxed was a page from an earlier assessment with the date altered to
12 suggest timely compliance.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Records of Acquisition and Disposition)**

15 19. Respondents are subject to disciplinary action under Code section 4300 for
16 unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with
17 section 4081, subdivisions (a) and (b), in that per Board audit for dates between January 1, 2013
18 and October 14, 2014, Respondents had overages of each of the following drugs - with no
19 records to account for the source of the excess drug stock:

- | | | |
|----|----------------------------|-------------------|
| 20 | a. Effient 10mg | 480 tablets |
| 21 | b. Nitrolingual Pump Spray | 1,452 pump sprays |
| 22 | c. Ranexa 500mg | 2,370 tablets |
| 23 | d. Victoza 2paks | 180 2 packs |

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Subverting an Investigation)**

26 20. Respondent Potash is subject to disciplinary action under Code section 4300 for
27 unprofessional conduct as defined in section 4301, subdivision (q) in that he subverted or
28 attempted to subvert a Board investigation when, following a Board inspection on or about

1 October 14, 2014 in which inspectors inquired about Respondents' current self-assessment ,
2 Respondent Potash falsified documents and/or submitted falsified documents to Board staff, and
3 otherwise falsely attempted to show compliance with self-assessment requirements.

4 **OTHER MATTERS**

5
6 21. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
7 Number Permit Number PHY 50390 issued to Fairfax Discount Pharmacy Inc. dba Fairfax
8 Discount Pharmacy, Fairfax Discount Pharmacy Inc. shall be prohibited from serving as a
9 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
10 five years if Pharmacy Permit Number PHY 50390 is placed on probation or until Pharmacy
11 Permit Number PHY 50390 is reinstated if it is revoked.

12 22. Pursuant to Code section 4307, if discipline is imposed on Permit Number PHY
13 50390 issued to Fairfax Discount Pharmacy Inc. while Boris Gorokhovskiy has been an officer
14 and owner and had knowledge of or knowingly participated in any conduct for which the
15 licensee was disciplined, Boris Gorokhovskiy shall be prohibited from serving as a manager,
16 administrator, owner, member, officer, director, associate, or partner of a licensee for five years
17 if Pharmacy Permit Number PHY 50390 is placed on probation or until Pharmacy Permit
18 Number PHY 50390 is reinstated if it is revoked.

19 **PRAYER**

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

- 22 1. Revoking or suspending Permit Number PHY 50390, issued to Fairfax Discount
23 Pharmacy Inc. dba Fairfax Discount Pharmacy, Boris Gorokhovskiy (owner) ;
24 2. Prohibiting Fairfax Discount Pharmacy Inc. from serving as a manager, administrator,
25 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
26 Permit Number PHY 50390 is placed on probation or until Pharmacy Permit Number PHY
27 50390 is reinstated if Pharmacy Permit Number PHY 50390 issued to Fairfax Discount
28 Pharmacy Inc. is revoked;

1 3. Prohibiting Boris Gorokhovsky from serving as a manager, administrator, owner,
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
3 Number PHY 50390 is placed on probation or until Pharmacy Permit Number PHY 50390 is
4 reinstated if Pharmacy Permit Number PHY 50390 issued to Trinity Mission Pharmacy, Inc. is
5 revoked;

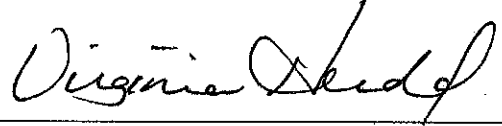
6 4. Ordering Fairfax Discount Pharmacy to pay the Board of Pharmacy the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 5. Revoking or suspending Pharmacist License Number RPH 19744 issued to Stanley
10 Potash;

11 6. Ordering Stanley Potash to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

14 7. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 2/9/17



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

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