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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 5574

13 **VISHAL RICK LUTHRA**
14 **1 Laketrail Cove**
Buena Park, CA 90621

A C C U S A T I O N

15 **Pharmacist License No. RPH 54431**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

23 2. On March 26, 2003, the Board issued Pharmacist License Number RPH 54431 to
24 Vishal Rick Luthra (Respondent). Respondent has also been known as Rick Vishal Luthra. The
25 Pharmacist License was in full force and effect at all times relevant to the charges brought
26 herein, and will expire on December 31, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Code section 4300, subdivision (a) provides that every license issued by the Board
6 may be suspended or revoked.

7 5. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
21 license on the ground that the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, or duties of the business or profession for which the license was issued.

23 8. Code section 493 states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is

1 substantially related to the qualifications, functions, and duties of the licensee in
2 question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Code section 4301 states, in pertinent part:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
9 is not limited to, any of the following:

10 ...
11 (f) The commission of any act involving moral turpitude, dishonesty,
12 fraud, deceit, or corruption, whether the act is committed in the course of relations
13 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

16 ...
17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of
19 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of
21 this state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction
23 shall be conclusive evidence only of the fact that the conviction occurred. The
24 board may inquire into the circumstances surrounding the commission of the
25 crime, in order to fix the degree of discipline or, in the case of a conviction not
26 involving controlled substances or dangerous drugs, to determine if the conviction
27 is of an offense substantially related to the qualifications, functions, and duties of
28 a licensee under this chapter. A plea or verdict of guilty or a conviction following
a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
subsequent order under section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

25 **REGULATORY PROVISIONS**

26 10. California Code of Regulations, title 16, section 1769, states, in pertinent part:

27 ...
28 (b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been

1 convicted of a crime, the board, in evaluating the rehabilitation of such person and
2 his present eligibility for a license will consider the following criteria:

- 3 (1) Nature and severity of the act(s) or offense(s).
4 (2) Total criminal record.
5 (3) The time that has elapsed since commission of the act(s) or
6 offense(s).
7 (4) Whether the licensee has complied with all terms of parole,
8 probation, restitution or any other sanctions lawfully imposed against the licensee.
9 (5) Evidence, if any, of rehabilitation submitted by the licensee.

10 11. California Code of Regulations, title 16, section 1770, states:

11 For the purpose of denial, suspension, or revocation of a personal or
12 facility license pursuant to Division 1.5 (commencing with Section 475) of the
13 Business and Professions Code, a crime or act shall be considered substantially
14 related to the qualifications, functions or duties of a licensee or registrant if to a
15 substantial degree it evidences present or potential unfitness of a licensee or
16 registrant to perform the functions authorized by his license or registration in a
17 manner consistent with the public health, safety, or welfare.

18 **COST RECOVERY**

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

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(August 18, 2015 Conviction for Grand Theft from January 1, 2003 to December 31, 2011)**

27 13. Respondent has subjected his Pharmacist License to disciplinary action under
28 Code sections 490 and 4301, subdivision (l) in that Respondent was convicted of crimes that are
substantially related to the qualifications, functions, and duties of a licensed pharmacist. The
circumstances are as follows:

a. On August 18, 2015, in a criminal proceeding entitled *The People of the
State of California vs. Rick Vishal Luthra*, in Orange County Superior Court, Central Justice

1 Center, Criminal Division, Case Number 15CF1232, Respondent was convicted on his plea of
2 guilty of violating, by 30 counts, Penal Code (PC) section 487, subdivision (a), grand theft, all
3 felonies that were reduced to misdemeanors under PC section 17, subdivision (b). Seventeen
4 counts of felony charges that were reduced to misdemeanor charges under PC section 17,
5 subdivision (b) for violation of Revenue and Tax Code (RTC) sections 7153.5 and 7152,
6 subdivision (a), tax evasion; felony enhancements under PC sections 186.11, subdivision (a)(2),
7 aggravated white-collar crime in excess of \$500,000.00 and 12022.6, subdivisions (a)(3) and (b),
8 taking in excess of \$1,300,000.00, for all 47 counts; and special allegations under PC section
9 1203.045, subdivision (a), denial of probation, and RTC section 7154, statute of limitations, for
10 all 47 counts, were dismissed.

11 b. As a result of the convictions, on August 18, 2015, Respondent was
12 sentenced to 180 days in the Orange County Theo Lacy Jail, which was suspended, and granted
13 three years informal probation under certain terms and conditions. Respondent was ordered to
14 pay fines, assessments, fees, and restitution.

15 c. The facts that led to the conviction are that on and between January 1,
16 2003 and December 31, 2011, while holding an active Pharmacist License and controlling
17 several corporations including Luthra Group, Inc., Luthra Foods, Inc., Luthra Corp., Luthra
18 Enterprises, Inc., R & S Foods, Inc., and B & L Foods, Inc., all in Buena Park, California,
19 Respondent filed false and fraudulent sales tax returns, with the intent to evade an unreported tax
20 liability exceeding \$25,000.00 for each 12 consecutive month period.

21 d. In early 2010, the Board of Equalization (BOE) conducted a Sales and Use
22 Tax audit of Subway Franchisor, aka Doctor's Associates, Inc. (DAI). The audit data provided
23 by DAI included Subway franchises owned and operated by Respondent. The sales tax collected
24 by DAI were compared to the tax returns of Respondent and the entities he controlled. There was
25 a large discrepancy, which necessitated an audit.

26 e. In November 2010, the BOE Irvine Sales and Tax District Office began an
27 audit of Respondent and the business entities he controlled. Respondent retained an accountant

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1 and a lawyer to address the audit. Both professionals failed to provide sufficient records for
2 examination requested by the auditor.

3 f. On December 22, 2010, the BOE Investigative Division (ID) assigned a
4 conduct of criminal investigation on Respondent and his controlled entities. On June 23, 2011,
5 the BOE ID and the California Highway Patrol served a search warrant on Respondent's
6 business locations, residence, storage facility, and third party affiliates such as banks. The search
7 revealed that Respondent and his business entities were responsible for producing a Weekly
8 Inventory Sales Report (WISR) for each franchise owned and operated by Respondent.

9 g. During the execution of the search, an external drive was discovered at
10 Respondent's home, and a computer was discovered at his office. Both the hard drive and the
11 computer contained a double set of books. For each quarter that Respondent and his controlled
12 entities were responsible for reporting taxable sales, there was a computer file folder labeled
13 "MOD WISR" and a second file folder labeled "NON MOD WISR." The "MOD WISR" folder
14 contained modified WISRs that misrepresented the sales tax collected and matched up with
15 quarterly filings of Respondent and his controlled entities. The "NON MOD WISR" folder
16 documents matched the actual sales tax collected and the documents were received by DAI.

17 h. Due to Respondent's, his accountant, his lawyer, and his controlled
18 entities' failure to provide accurate and complete records during the initial stages of the audit,
19 BOE did not discover that Respondent and his controlled entities underreported the sales tax his
20 stores collected from customers until August 2010, when the audit records were obtained from
21 DAI.

22 SECOND CAUSE FOR DISCIPLINE

23 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty, 24 Fraud, Deceit, or Corruption)**

25 14. Respondent has subjected his Pharmacist License to disciplinary action under
26 Code section 4301, subdivision (f), in that he committed acts involving moral turpitude,
27 dishonesty, fraud, deceit, and corruption when he and his controlled entities underreported the
28 sales tax his stores collected from customers, evaded payment of taxes, and kept for himself the

1 unreported tax collected, as described in paragraph 13, above, and incorporated herein by this
2 reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Making Any Document that Falsely Represented the Existence**
5 **of a State of Facts)**

6 15. Respondent has subjected his Pharmacist License to disciplinary action under
7 Code section 4301, subdivision (g), in that he committed acts involving making of documents
8 that falsely represented the existence of a state of facts when he modified Weekly Inventory
9 Sales Report, that originally indicated the sales tax his stores collected from customers.
10 Respondent would then keep the difference and reported only what were left of the sales tax his
11 stores collected for tax returns purposes, as described in paragraph 13, above, and incorporated
12 herein by this reference.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacist License Number RPH 54431 issued to Vishal
17 Rick Luthra;
- 18 2. Ordering Vishal Rick Luthra to pay the Board of Pharmacy the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23
24 DATED: _____

4/20/16



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

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