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

11 In the Matter of the Accusation Against:

Case No. 5905

12 **WATERFRONT PHARMACY**  
13 **JOSEPH M. HUANTE AND THELMA**  
**RAMSEYER, OWNERS**  
14 **123 S. Commerce St., #A**  
**Stockton, CA 95202**

**ACCUSATION**

15 **Permit No. PHY 36858,**

16 **and**

17 **JOSEPH MANUEL HUANTE**  
18 **123 S. Commerce Street, Suite A**  
**Stockton, CA 95202**

19 **Pharmacist License No. RPH 36843**

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 November 13, 1990, the Board of Pharmacy issued Permit Number PHY  
27 36858 to Waterfront Pharmacy with Joseph M. Huante designated as the Pharmacist-in-Charge,  
28 Thelma Ramseyer as a fifty percent Partner and Joseph M. Huante as a fifty percent Partner

1 (hereinafter "Respondent Waterfront Pharmacy"). The Permit was in full force and effect at all  
2 times relevant to the charges brought herein and will expire on November 1, 2017, unless  
3 renewed.

4 3. On or about January 27, 1982, the Board of Pharmacy issued Pharmacist License  
5 Number RPH 36843 to Joseph Manuel Huante (hereinafter "Respondent Huante"). The  
6 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
7 and will expire on January 31, 2018, unless renewed.

#### 8 JURISDICTION

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

12 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
13 the Pharmacy Law [Bus. & Prof. Code, § 4000 *et seq.*] and the Uniform Controlled Substances  
14 Act [Health & Safety Code, § 11000 *et seq.*]

15 6. Section 4300, subdivision (a), of the Code provides that every license issued by the  
16 Board may be suspended or revoked.

17 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
18 suspension of a Board-issued license, the placement of a license on a retired status, or the  
19 voluntary surrender of a license by a licensee shall not deprive the Board of jurisdiction to  
20 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
21 licensee or to render a decision suspending or revoking the license.

#### 22 STATUTORY AND REGULATORY PROVISIONS

23 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
24 drug or dangerous device except upon the prescription of an authorized prescriber.

25 9. Section 4081 of the Code states, in pertinent part:

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

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

8 (b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics  
9 provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-  
10 in-charge, responsible manager, or designated representative-in-charge, for maintaining the  
11 records and inventory described in this section.

12 ...

13 10. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by  
14 the Board, all records and other documentation of the acquisition and disposition of dangerous  
15 drugs and devices by any entity licensed by the Board be retained on the licensed premises, in a  
16 readily retrievable form, for three years from the date of making.

17 11. Section 4113, subdivision (c), of the Code states:

18 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state  
19 and federal laws and regulations pertaining to the practice of pharmacy.

20 12. Section 4301 of the Code states, in pertinent part:

21 The board shall take action against any holder of a license who is guilty of unprofessional  
22 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is  
23 not limited to, any of the following:

24 ...

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

27 ...

28

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

5 ...

6 13. Section 4307(a) of the Code states that:

7 Any person who has been denied a license or whose license has been revoked or is under  
8 suspension, or who has failed to renew his or her license while it was under suspension, or who  
9 has been a manager, administrator, owner, member, officer, director, associate, or partner of any  
10 partnership, corporation, firm, or association whose application for a license has been denied or  
11 revoked, is under suspension or has been placed on probation, and while acting as the manager,  
12 administrator, owner, member, officer, director, associate, or partner had knowledge of or  
13 knowingly participated in any conduct for which the license was denied, revoked, suspended, or  
14 placed on probation, shall be prohibited from serving as a manager, administrator, owner,  
15 member, officer, director, associate, or partner of a licensee as follows:

16 (1) Where a probationary license is issued or where an existing license is placed on  
17 probation, this prohibition shall remain in effect for a period not to exceed five years.

18 (2) Where the license is denied or revoked, the prohibition shall continue until the license is  
19 issued or reinstated.

20 ...

21 14. Section 4126.5 of the Code states:

22 (a) A pharmacy may furnish dangerous drugs only to the following:

23 (1) A wholesaler owned or under common control by the wholesaler from whom the  
24 dangerous drug was acquired.

25 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

26 (3) A licensed wholesaler acting as a reverse distributor.

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28 ///

1 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug  
2 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to  
3 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

4 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized  
5 by law.

6 (6) A health care provider that is not a pharmacy but that is authorized to purchase  
7 dangerous drugs.

8 (7) To another pharmacy under common control.

9 (b) Notwithstanding any other provision of law, a violation of this section may subject the  
10 person or persons who committed the violation to a fine not to exceed the amount specified  
11 in Section 125.9 for each occurrence pursuant to a citation issued by the board.

12 (c) Amounts due from any person under this section on or after January 1, 2005, shall be  
13 offset as provided under Section 12419.5 of the Government Code. Amounts received by the  
14 board under this section shall be deposited into the Pharmacy Board Contingent Fund.

15 (d) For purposes of this section, "common control" means the power to direct or cause the  
16 direction of the management and policies of another person whether by ownership, by voting  
17 rights, by contract, or by other means.

18 15. Section 4306.5 of the Code states:

19 Unprofessional conduct for a pharmacist may include any of the following:

20 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or  
21 her education, training, or experience as a pharmacist, whether or not the act or omission arises in  
22 the course of the practice of pharmacy or the ownership, management, administration, or  
23 operation of a pharmacy or other entity licensed by the board.

24 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement  
25 his or her best professional judgment or corresponding responsibility with regard to the  
26 dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with  
27 regard to the provision of services.

28 (c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate

1 patient, prescription, and other records pertaining to the performance of any pharmacy function.

2 (d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and  
3 retain appropriate patient-specific information pertaining to the performance of any pharmacy  
4 function.

5 16. Section 4332 of the Code states:

6 Any person who fails, neglects, or refuses to maintain the records required by Section 4081  
7 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or  
8 refuses to produce or provide the records within a reasonable time, or who willfully produces or  
9 furnishes records that are false, is guilty of a misdemeanor.

10 17. California Code of Regulations, title 16, section 1714, states in pertinent part:

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

15 ...

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

20 18. California Code of Regulations, title 16, section 1718, states:

21 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions  
22 Code shall be considered to include complete accountability for all dangerous drugs handled by  
23 every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories  
24 required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least  
25 3 years after the date of the inventory.

26 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

27 19. Section 4021 of the Code provides that a "controlled substance" means any substance  
28 listed in Schedules I through V contained in Health and Safety Code section 11053 *et seq.*



1 San Leandro, California. The two dangerous drugs furnished by Respondents to Getwell  
2 Pharmacy and Medical Supply were not in shortage during this time period.

3 25. On December 1, 2014, a Board of Pharmacy inspector informed Waterfront  
4 Pharmacy owner and Pharmacist-in-Charge Huante that furnishing hydrocodone/acetaminophen  
5 and promethazine with codeine syrup to another pharmacy was not permitted by law because  
6 there were no shortages of either drug. Invoices dated January 27, 2015, February 3, 2015 and  
7 February 4, 2015 indicate that Respondents provided a total of 156 pints of promethazine with  
8 codeine to Getwell Pharmacy and Medical Supply, even after being specifically advised against  
9 this activity by the Board inspector.

10 26. An audit conducted by Board of Pharmacy inspectors for the audit period from  
11 November 27, 2012 through December 1, 2014, revealed that Waterfront Pharmacy did not  
12 account for approximately 160,058 tablets of hydrocodone/acetaminophen 10/325 mg. and  
13 approximately 1,421 pints of promethazine with codeine syrup.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Illegally Furnishing Dangerous Drugs to Another Pharmacy)**

16 27. Respondents are each and severally subject to disciplinary action under Code sections  
17 4126.5(a)(4) and 4301, subsections (j) and (o), in that they furnished dangerous drugs to Getwell  
18 Pharmacy and Medical Supply during a time period where there was no shortage of the dangerous  
19 drugs, in violation of pharmacy law, as set forth above in paragraphs 24-25.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Due Caution)**

22 28. Respondents are each and severally subject to disciplinary action under Code sections  
23 4306.5(b), and 4301, subsections (j) and (o), in that Respondents failed to exercise professional  
24 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled  
25 substances and dangerous drugs, as set forth above in paragraphs 24-25.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Current Inventory)**

3 29. Respondents are each and severally subject to disciplinary action under Code sections  
4 4113(c), 4301, subsections (j) and (o), and, by reference to sections 4081, 4105 and/or 4332 of the  
5 Code, and/or California Code of Regulations, title 16, section 1718, for violating statutes  
6 regulating controlled substances or dangerous drugs, and/or indirectly violating, attempting to  
7 violate, or assisting in or abetting a violation of laws or regulations governing the practice of  
8 pharmacy, in that, as set forth above in paragraphs 24-26, Respondents failed to maintain an  
9 accurate, complete and readily retrievable inventory and/or records of acquisition and disposition  
10 of all dangerous drugs in the pharmacy inventory.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Facilities)**

13 30. Respondents are each and severally subject to disciplinary action under Code sections  
14 4113(c), 4301 subdivisions (j) and (o), and under California Code of Regulations, title 16, section  
15 1714, subdivisions (b) and (d), in that they failed to maintain the pharmacy facilities so that drugs  
16 are safely and properly prepared, maintained, secured, and distributed, as set forth above in  
17 paragraphs 24-26.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 31. Respondents are each and severally subject to disciplinary action under code section  
21 4301 in that Respondents, as set forth above in paragraphs 24-26, engaged in unprofessional  
22 conduct.

23 **OTHER MATTERS**

24 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
25 PHY 36858 issued to Waterfront Pharmacy, Waterfront Pharmacy shall be prohibited from  
26 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a  
27 licensee for five years if Pharmacy Permit Number PHY 36858 is placed on probation or until  
28 Pharmacy Permit Number PHY 36858 is reinstated if it is revoked.

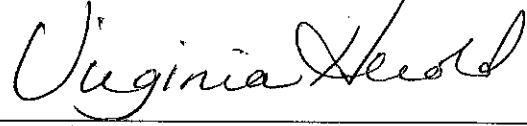


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6. Ordering Waterfront Pharmacy and Joseph M. Huante to jointly and severally be responsible to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 7/19/17



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

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