

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 KEVIN J. SCHETTIG  
Deputy Attorney General  
4 State Bar No. 234240  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2660  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:  
12 **CHERRY SARTE BORJA**  
13 **1219 N. Everett St.**  
**Glendale, CA 91207**  
14 **Pharmacist License No. RPH 53305**  
15 Respondent.  
16

Case No. 5913

**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about March 19, 2002, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 53305 to Cherry Sarte Borja ("Respondent"). The Pharmacist License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on August 31,  
24 2017, unless renewed.

25 **JURISDICTION**

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

1           4.    Section 4300 of the Code states:

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

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

6           "(1) Suspending judgment.

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

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

9           "(4) Revoking his or her license.

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

12          ...

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

18          5.    Section 4300.1 of the Code states:

19          "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
20 operation of law or by order or decision of the board or a court of law, the placement of a license  
21 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
22 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
23 proceeding against, the licensee or to render a decision suspending or revoking the license."

24   **STATUTORY AND REGULATORY PROVISIONS**

25          6.    Section 4301 of the Code states:

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

...

(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.

7. Code section 4306.5 states in part:

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

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

8. Code section 4076 states in part:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

...

(7) The strength of the drug or drugs dispensed.

9. Title 16, California Code of Regulations ("CCR"), section 1711 states in part:

(c)(1) Each quality assurance program shall be managed in accordance with written policies and procedures maintained in the pharmacy in an immediately retrievable form.

(2) When a pharmacist determines that a medication error has occurred, a pharmacist shall as soon as possible:

(A) Communicate to the patient or the patient's agent the fact that a medication error has occurred and the steps required to avoid injury or mitigate the error.

(B) Communicate to the prescriber the fact that a medication error has occurred.

10. Title 16, CCR, section 1716 states in part:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription.

///  
///

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **DRUG CLASSIFICATION**

9 12. Spironolactone, the generic name for Aldactone, is a dangerous drug pursuant to Code  
10 section 4022.

11 **FACTUAL ALLEGATIONS**

12 13. On December 23, 2013, a physician ordered spironolactone 5 mg dispensed every 12  
13 hours to baby J.L., a critically ill neonate patient in the Neonatal Intensive Care Unit ("NICU") at  
14 California Hospital Medical Center, in Los Angeles, California.

15 14. On December 23, 2013, Respondent, a pharmacist working at California Hospital  
16 Medical Center, began dispensing spironolactone 5 mg/ml labeled with a concentration of 1  
17 mg/ml resulting in J.L. receiving spironolactone 25 mg, which was five times the prescribed dose.

18 15. On December 24, 2013, an intern pharmacist informed Respondent the spironolactone  
19 suspension concentration and the prescription label were not the same.

20 16. On December 24, 2013, Respondent then changed the concentration in the pharmacy  
21 computer and replaced the spironolactone syringes with a different labeled syringe.

22 17. Respondent failed to notify the NICU nurse or physician of the prescription errors.

23 18. Instead of immediately notifying anyone of the error, Respondent reviewed J.L.'s  
24 potassium levels daily after discovering the error and wrote down J.L.'s potassium levels.

25 19. On December 27, 2013, Respondent informed Pharmacist-in-Charge ("PIC") Kil Yi  
26 of the error when J.L.'s potassium level was greater than 6. PIC Yi then informed the physician.

27 20. J.L. ingested five times the prescribed dose for a total of three doses before  
28 Respondent disclosed her error.

1 21. Respondent discarded the incorrect spironolactone syringes, which should have been  
2 saved for investigation.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Variation from Prescription)**

5 22. Respondent is subject to disciplinary action under Code section 4301(o) for violating  
6 Business and Professions Code section 4076(a)(7) and title 16, California Code of Regulations,  
7 section 1716, in that on or about December 23, 2013, while working at California Hospital  
8 Medical Center, Respondent incorrectly dispensed an order for spironolactone 5 mg/5 ml RX#  
9 1099790967 with spironolactone 5 mg/ml to patient J.L., which resulted in J.L. ingesting five  
10 times the prescribed dose, as more fully set forth in paragraphs 13 through 21 above and  
11 incorporated herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Inappropriate Exercise of Professional Training, Education,  
14 Experience)**

15 23. Respondent is subject to disciplinary action under Code section 4301(o) for violating  
16 Code section 4306.5(a) and title 16, California Code of Regulations section 1711(c)(2), in that on  
17 or about December 24, 2013, while working at California Hospital Medical Center, Respondent  
18 discovered and changed patient J.L.'s spironolactone 5 mg/5 ml RX# 1099790967 medication  
19 error but did not inform her supervisor, the physician, or the patient of the error until December  
20 27, 2013, at which time J.L.'s potassium levels were in critical range, as more fully set forth in  
21 paragraphs 13 through 21 above and incorporated herein.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

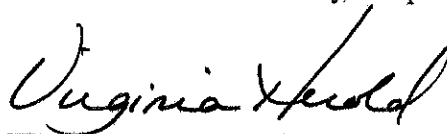
PRAYER

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 Pharmacist License Number RPH 53305, issued to Cherry Sarte Borja;
2. Ordering Cherry Sarte Borja 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,
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

7/11/17



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

LA2016602313  
52269682.doc