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

11 In the Matter of the Accusation Against:

Case No. 5927

12 **CVS PHARMACY LLC,**
13 **dba CVS/PHARMACY #3079**
14 **2224 Patterson Road**
15 **Riverbank, CA 95367**

ACCUSATION

16 **Pharmacy Permit No. PHY 49549**

17 **and**

18 **NIKMALA SUN TAN**
19 **5516 Gladstone Dr.**
20 **Stockton, CA 95219**

21 **Pharmacist License No. RPH 65685**

Respondent.

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 ("Board"), Department of Consumer Affairs.

26 2. On or about November 10, 2008, the Board issued Pharmacy Permit Number PHY
27 49549 to CVS Pharmacy LLC ("Respondent"), doing business as CVS/Pharmacy #3079. On and
28 between March 24, 2013 to October 5, 2013, Nikmala Sun Tan ("Respondent Tan") was the

1 pharmacist-in-charge. The pharmacy permit was in full force and effect at all times relevant to
2 the charges brought herein and will expire on November 1, 2017, unless renewed.

3 3. On or about August 10, 2011, the Board issued Pharmacist License No. RPH 65685
4 to Nikmala Sun Tan. At all relevant times herein said license was in full force and effect and will
5 expire on September 30, 2018, unless renewed.

6 JURISDICTION

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

10 5. Code section 4300 states, in pertinent part:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

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

18 (4) Revoking his or her license.

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

20 6. Code section 4300.1 states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued
22 license by operation of law or by order or decision of the board or a court of law, the
23 placement of a license on a retired status, or the voluntary surrender of a license by a
24 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.

25 STATUTORY PROVISIONS

26 7. Code section 4301 states, in pertinent part:

27 The board shall take action against any holder of a license who is guilty
28 of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
to, any of the following:

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(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 . . .

8. Code section 4059, subdivision (a), states, in pertinent part:

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 . . .

9. Code section 4113 provides in pertinent part:

(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of the identify and license number of that pharmacist and the date he or she was designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(c) The pharmacist in charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations to the practice of pharmacy...."

10. Code section 4306.5 (b) provides in pertinent part that unprofessional conduct may include any of the following:

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

11. Health and Safety Code section 11153, subdivision (a), states:

A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her

comfortable by maintaining customary use.

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that a 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.

DRUG CLASSIFICATIONS

13. "Roxicodone", a brand name for oxycodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Roxicodone is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

14. "Norco", a brand name for hydrocodone/acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056 (e) (4). Norco is also a dangerous drug pursuant to Code section 4022 and is used to treat pain.

15. "Xanax", a brand name for alprazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1). Xanax is also a dangerous drug pursuant to Code section 4022 and is used to treat anxiety.

16. "Adipex-P", a brand name for phentermine, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f)(4). Adipex-P is also a dangerous drug pursuant to Code section 4022 and is used as an appetite suppressant.

17. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance pursuant to Title 21, Code of Federal Regulations, section 1308.14, subdivision (c)(6). Soma is also a dangerous drug pursuant to Code section 4022 and is used as a muscle relaxant.

18. "Adderall", a brand name for amphetamine salts, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1). Adderall is also a dangerous drug pursuant to Code section 4022 and is used to treat Attention Deficit Hyperactivity Disorder.

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1 FACTUAL ALLEGATIONS

2 19. On or about January 13, 2015, pharmacy technician Mona Chavarin ("Chavarin") was
3 arrested by the Modesto Police Department for, among other things, filling altered prescriptions
4 and criminal conspiracy¹. The police department sent a copy of the arrest report to the Board.
5 The report indicated that Lenele Nunez ("Nunez") stole prescription pads belonging to physician
6 assistant R. S. and sold them to Christina Martinez ("Martinez"). Martinez forged the
7 prescriptions, and she and Lance Wilson had the prescriptions filled at CVS/Pharmacy #9248
8 ("CVS #9248") located in Modesto California, where Chavarin was employed as a pharmacy
9 technician. Chavarin verified the prescriptions through Nunez. Fourteen patient names, 8 actual
10 and 6 fictional, were connected to the fraud and approximately 286 prescriptions were issued.
11 The prescriptions were filled for approximately 17,350 oxycodone tablets, 23,760 hydrocodone
12 tablets, and 7,650 tablets of Schedule IV controlled drugs.

13 20. On or about February 4, 2015, Board Inspector H. conducted an inspection at
14 CVS/Pharmacy #3079 ("CVS #3079") and was assisted by Inspector T. Frank Michael Sasaki
15 ("Sasaki") was present and informed Inspector H. that he was the interim pharmacist-in-charge.
16 Sasaki had an envelope containing copies of prescriptions and other documents that had recently
17 been removed by the MNET, and a pharmacy technician made copies of the documents for the
18 inspectors' use. Inspector H. reviewed the documents and noticed that most of the patient names
19 were the same patient names used on the fraudulent prescriptions obtained from CVS #9248.
20 Inspector H. asked Sasaki if she (Inspector H.) could review each known fraudulent patient's
21 payment information in the pharmacy's computer. Sasaki agreed. Inspector H. obtained copies
22 of 88 pages of prescription documents and patient prescription profiles; the documents were
23 grouped by patient and included copies of the forged prescriptions as well as the associated
24 patient prescription profiles. Nine of the 13 fraudulent patients identified at CVS #9248 were
25 identified in the records at CVS #3079. None of the patient prescription records listed any

26 ¹ On or about February 19, 2015, Chavarin was indicted in United States District Court,
27 Eastern District of California, Case No. 1:15CR00046-LJO-SKO, and charged with conspiracy to
28 distribute oxycodone and hydrocodone and possession with intent to distribute controlled
substances, aiding and abetting.

1 medication other than the controlled substances noted above, and the prescriptions were paid
2 using cash discount cards². Inspector H. noted that the prescriptions were written on prescription
3 forms belonging to physician assistant R. S. at CVPMP and had been forged. Most of the
4 prescriptions were for "Holy Trinity" drugs ("Holy Trinity" is the street name for the combination
5 of oxycodone IR 30 mg, Norco or H/APAP 10/325 mg, and Xanax 2 mg), and large quantities (90
6 to 240 tablets) of each controlled substance in the "Holy Trinity" had been written in on the
7 prescription forms. The date range for the fraudulent prescriptions was from June 2013 to March
8 2014. Inspector H. noticed that patient phone numbers were written on the prescriptions; some of
9 the same phone numbers were written on prescriptions for different patients. None of the
10 prescriptions were dispensed on the date the prescriptions were written, and most were dispensed
11 several days later. There were 15 pages of additional patient records contained in the envelope
12 provided by Sasaki for patients not previously identified as fraudulent at CVS #9248. Inspector
13 H. confirmed with Detective M. that these additional patients were also fraudulent.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unlawful Furnishing of Dangerous Drugs)**

16 21. Respondent CVS is subject to disciplinary action pursuant to Code section 4301,
17 subdivision (o), for unprofessional conduct, in that Respondent violated or attempted to violate,
18 directly or indirectly, assisted in or abetted the violation of, or conspired to violate state laws
19 governing pharmacy, specifically, Code section 4059, subdivision (a), as follows: In and between
20 June 2013 and March 2014, while employed and on duty at CVS/Pharmacy #3079, Respondent's
21 pharmacists verified and dispensed approximately 60 fraudulent prescriptions for the controlled
22 substances oxycodone, mixed amphetamine salts, hydrocodone/acetaminophen, alprazolam,
23 phentermine, and carisoprodol, including the following:

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	Prescription Numbers	Fraudulent Patient: Initials & Date of Birth
25	1. 419902, 419904, 419905	RL (7/1/79)

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27 ² A cash discount card is often billed the same way as regular insurance and includes an
28 ID number. However, the patient must provide his or her name, address, and date of birth.
Patients sometimes receive a discounted cash price for a prescription.

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2.	411381, 411382	
3.	401816, 401817, 401818	
4.	411199, 411200	CC (11/8/77)
5.	391545	
6.	394068	CL (4/1/80)
7.	410799, 410800, 410801	
8.	420394, 420395, 420396	ID (9/8/69)
9.	399221, 399222, 399223	
10.	406172, 406173, 406174	DS (3/8/74)
11.	411693, 411694, 411695	
12.	405543, 405544, 405545	PS (2/3/58)
13.	392811, 392812	
14.	411734, 411735, 411736	
15.	380641	JW (7/28/51)
16.	409391, 409392, 409393	
17.	428927, 428928, 428929	RA (9/3/67)
18.	396625, 396626	
19.	422868, 422869, 422871	
20.	408134, 408135, 408136	
21.	400160, 400161, 400163	AA (2/16/54)
22.	389158	AM (5/11/55)
23.	392895, 392896	CW (5/4/56)
24.	378047	RM (3/20/76)
25.	397220, 397221	BM (5/18/81)
26.	377993	CM (2/4/87)

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Exercise Corresponding Responsibility with Regard to**
3 **the Dispensing or Furnishing of Controlled Substances)**

4 22. Respondent CVS is subject to disciplinary action pursuant to Code section 4301,
5 subdivision (j), for unprofessional conduct, in that Respondent violated state laws regulating
6 controlled substances, specifically, Health and Safety Code section 11153, subdivision (a), as
7 follows: In and between June 2013 and March 2014, while employed and on duty at
8 CVS/Pharmacy #3079, Respondent's pharmacists failed to exercise or implement their best
9 professional judgment or corresponding responsibility with regard to the dispensing or furnishing
10 of controlled substances and dangerous drugs, as set forth in paragraph 21 above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unlawful Furnishing of Dangerous Drugs)**

13 23. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
14 subdivision (o), for unprofessional conduct, in that Respondent, as pharmacist-in-charge of
15 CVS/Pharmacy #9248, violated or attempted to violate, directly or indirectly, assisted in or
16 abetted the violation of, or conspired to violate state laws governing pharmacy, specifically, Code
17 section 4059, subdivision (a), as follows: In and between March 24, 2013 and October 5, 2013,
18 Respondent verified and dispensed RX #378047 on June 22, 2013 and RX # 394068 on
19 September 20, 2013, both were fraudulent prescriptions.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Exercise Corresponding Responsibility with Regard to**
22 **the Dispensing or Furnishing of Controlled Substances)**

23 24. Respondent Tan is subject to disciplinary action pursuant to Code section 4301,
24 subdivision (j) and 4306.5 (b), for unprofessional conduct, in that Respondent, as pharmacist-in-
25 charge of CVS/Pharmacy #9248, violated state laws regulating controlled substances,
26 specifically, Health and Safety Code section 11153, subdivision (a), as follows: In and between
27 March 2013 and October 2013, Respondent failed to exercise or implement her best professional
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1 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled
2 substances and dangerous drugs, as set forth above in paragraph 21.

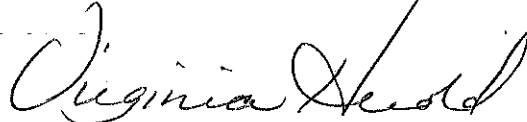
3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Permit Number PHY 49549, issued to CVS
7 Pharmacy LLC, doing business as CVS/Pharmacy #3079;
- 8 2. Revoking or suspending Pharmacist License No. RPH 65685 issued to Nikmala Sun
9 Tan;
- 10 3. Ordering CVS Pharmacy LLC, doing business as CVS/Pharmacy #3079 and Nikmala
11 sun Tan, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement
12 of this case, pursuant to Business and Professions Code section 125.3; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: _____

10/7/17



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

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