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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. 5957

12 **SAFEWAY PHARMACY 911**
13 **477 West Napa Street**
Sonoma, CA 95476

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 35032**

15 **FRANK PETER TARANTINO, JR.**
16 **485 Pinewood Drive**
San Rafael, CA 94903

17 **Pharmacist License No. RPH 27678**

18 Respondents.
19

20 Complainant alleges:
21

22 **PARTIES**

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

25 2. On or about September 23, 1988, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 35032 to Safeway Pharmacy 911, with Frank Tarantino designated as the
27 Pharmacist-in-Charge from May 5, 2013, to October 20, 2014 ("Respondent Safeway"). The
28 Pharmacy Permit expired on January 30, 2015, and was cancelled on April 15, 2015.

3. On or about May 23, 1972, the Board of Pharmacy issued Pharmacist License Number RPH 27678 to Frank Peter Tarantino ("Respondent Tarantino"). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on February 28, 2017, unless renewed.

JURISDICTION

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

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

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

7. 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.”

STATUTORY AND REGULATORY PROVISIONS

8. Section 4105 of the Code states, in pertinent part:

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

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

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

3 9. Code section 4113, subdivision (c), states:

4 “(c) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all
5 state and federal laws and regulations pertaining to the practice of pharmacy.”

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

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

11 ...

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

16 DANGEROUS DRUGS

17 11. Section 4022 of the Code states

18 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
19 humans or animals, and includes the following:

20 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
21 prescription,” “Rx only,” or words of similar import.

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

25 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
26 prescription or furnished pursuant to Section 4006.”

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12. Hydrocodone with acetaminophen, also known as "Norco," is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(3), and a dangerous drug pursuant to Code section 4022. On October 6, 2014, Hydrocodone with acetaminophen was reclassified as a Schedule II controlled substance under the Code of Federal Regulations, title 21, section 1308.12, subdivision (b)(1)(vii).

COST RECOVERY

13. Section 125.3 of the Code states, in pertinent part, that the 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.

RESPONDENT SAFEWAY

FIRST CAUSE FOR DISCIPLINE

(Cal. Code Regs., tit. 16, § 1714, subd. (b))
(Failure to Properly Secure Dangerous Drugs)

14. Respondent Safeway has subjected its pharmacy permit to disciplinary action in that it failed to properly secure dangerous drugs at its facility. (Cal. Code Regs., tit. 16, § 1714, subd. (b).) The circumstances are as follows:

15. On or about May 5, 2014, the Board received a letter from Respondent Safeway's Regional Pharmacy Manager, G.S., indicating a potential loss of 24,000 tablets of Norco. G.S. explained that on February 13, 2014, Respondent Safeway detected a potential loss of Norco. A data mining analysis between February 6, 2013, and February 6, 2014, indicated that Respondent Safeway had ordered approximately 23,686 more doses of Norco than were dispensed. Respondent Safeway discovered that twenty-four 1,000 count bottles of Norco were ordered in a suspicious manner in that they were not ordered through the automated ordering system, but instead were ordered manually. These manual orders were not entered into the inventory system. A more detailed investigation revealed another manual order of one 1,000 count bottle of Norco on March 4, 2014, which was not added to inventory. An additional 3,000 tablets of Norco were ordered manually on April 13, 2014. These tablets were added to inventory.

16. Respondent Safeway's investigation revealed that almost all of the manual orders of Norco were placed by a pharmacy technician working for Respondent Safeway. The pharmacy technician was terminated for job abandonment on June 26, 2014, following the revocation of his technician's license on June 20, 2014. A Board investigator conducted an audit for Norco received and dispensed by Respondent Safeway between May 7, 2012, and July 9, 2014, and determined that 49,368 tablets of Norco were unaccounted for during that period. Furthermore, the Board's investigation revealed that between April 29, 2013, and July 9, 2014, while Respondent Tarantino was the Pharmacist-In-Charge of Respondent Safeway, 28,256 tablets of Norco were unaccounted for.

SECOND CAUSE FOR DISCIPLINE

(Bus. & Prof. Code, § 4105, subds., (a), (c))
(Failure to Retain Records on Licensed Premises)

17. Respondent Safeway has subjected its pharmacy permit to disciplinary action because it failed to retain records regarding the acquisition and disposition of dangerous drugs on the licensed premises in a readily retrievable form. (Bus. & Prof. Code, § 4105, subs. (a), (c).) The circumstances are that on or about July 9, 2014, a Board investigator conducted an inspection of Respondent Safeway. Respondent Tarantino was the pharmacist in charge at the time, and had been since May 5, 2013. During the inspection, the Board investigator asked Respondent Tarantino where the records for the acquisition and disposition of dangerous drugs were stored. Respondent Tarantino stated that Respondent Safeway sent the records to Iron Mountain Storage, an off-site facility. The Board had not granted Respondent Safeway an off-site storage waiver.

RESPONDENT TARANTINO

FIRST CAUSE FOR DISCIPLINE

(Cal. Code Regs., tit. 16, § 1714, subd. (d))
(Failure to Effectively Control Theft or Diversion of Dangerous Drugs)

18. Respondent Tarantino has subjected his Pharmacist License to disciplinary action in that he failed to be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. (Cal. Code Regs., tit. 16, § 1714, subd. (d).) The

1 circumstances are that while he was the Pharmacist-in-Charge of Respondent Safeway between
2 May 5, 2013, and July 9, 2014, at least 28,256 tablets of Norco were unaccounted for. The
3 circumstances are set forth in further detail in paragraphs 15 and 16, above.

4 SECOND CAUSE FOR DISCIPLINE

5 (Bus. & Prof. Code, § 4105, subds. (a)(c))
6 (Failure to Retain Records on Licensed Premises)

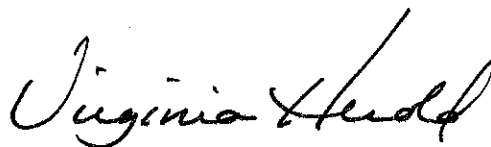
7 19. Respondent has subjected his Pharmacist License to disciplinary action in that he
8 failed to retain records regarding the acquisition and disposition of dangerous drugs on the
9 licensed premises in a readily retrievable form. (Bus. & Prof. Code, § 4105, subds. (a), (c).) The
10 circumstances are set forth in paragraph 17, above.

11 PRAAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
13 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Original Permit Number PHY 35032, issued to Safeway
15 Pharmacy 911;
16 2. Revoking or suspending Original Pharmacist License Number RPH 27678, issued to
17 Frank Peter Tarantino;
18 3. Ordering Respondent Safeway and Respondent Tarantino to pay the Board of
19 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code section 125.3; and,
21 4. Taking such other and further action as deemed necessary and proper.

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23 DATED: 7/1/17



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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