

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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 **Lester Botill**
13 149 Crows Nest Court
Atwater, CA 95301
14 Pharmacist License Number RPH 28416
15 Respondent.
16

Case No. 5960

ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about July 31, 1973, the Board of Pharmacy issued Pharmacist License Number
23 RPH 28416 to Lester Botill (Respondent). The Pharmacist License was in full force and effect at
24 all times relevant to the charges brought herein and will expire on November 30, 2016, unless
25 renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

12 (4) Revoking his or her license.

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

15 5. Section 4300.1 of the Code states:

16 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
17 operation of law or by order or decision of the board or a court of law, the placement
18 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.

19 **STATUTORY PROVISIONS**

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

23 7. Section 4301 of the Code states:

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

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

28 . . .

1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter, or
4 to any other person or to the public, or to the extent that the use impairs the ability of
5 the person to conduct with safety to the public the practice authorized by the license.

6 ...

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

9 ...

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

14 8. Section 4022 of the Code states

15 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use
16 in humans or animals, and includes the following:

17 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
18 prescription," "Rx only," or words of similar import.

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

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

25 9. Section 4327 of the Code states "Any person who, while on duty, sells, dispenses or
26 compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall
27 be guilty of a misdemeanor."

28 10. Section 4060 of the Code states

A person shall not possess any controlled substance, except that furnished to a person
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a
naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section
4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any
controlled substance by a manufacturer, wholesaler, third-party logistics provider,
pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant,
if in stock in containers correctly labeled with the name and address of the supplier or
producer.

1 This section does not authorize a certified nurse-midwife, a nurse practitioner, a
2 physician assistant, or a naturopathic doctor, to order his or her own stock of
3 dangerous drugs and devices.

4 11. Health and Safety Code section 11170 states “No person shall prescribe, administer, or
5 furnish a controlled substance for himself.”

6 12. Health and Safety Code section 11173 states “(a) No person shall obtain or attempt to
7 obtain controlled substances, or procure or attempt to procure the administration of or
8 prescription for controlled substances, (1) by fraud, deceit, misrepresentation , or subterfuge; or
9 (2) by the concealment of a material fact. “

10 COST RECOVERY

11 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case.

15 DRUGS

16 14. Virtussin AC with Codeine, a brand name for guaifenesin with codeine, is a cough
17 syrup and a Schedule V controlled substances under Health and Safety Code section 11058 and a
18 dangerous drug under Business and Professions Code section 4022.

19 15. Phenergan VC with Codeine, the brand name for promethazine and phenylephrine with
20 codeine, is a cough syrup and a Schedule V controlled substances under Health and Safety Code
21 section 11058 and a dangerous drug under Business and Professions Code section 4022.

22 16. Phenergan with Codeine, the brand name for promethazine with codeine, is a cough
23 syrup and a Schedule V controlled substances under Health and Safety Code section 11058 and a
24 dangerous drug under Business and Professions Code section 4022.

25 FACTUAL BACKGROUND

26 17. On or about March 17, 2016, Lester Botill (Respondent) was the pharmacist-in-charge
27 at Walgreens Pharmacy #06781, located in Atwater, California, and was administered a random
28 drug test which revealed a positive result for metabolites of codeine and morphine. Respondent

1 signed a statement in which he said he consumed promethazine with codeine, without a valid
2 prescription, while working as pharmacist at Walgreens. Pharmacy audit and inventory logs for
3 the drug revealed shortages consistent with pilferage. Respondent was terminated on April 4,
4 2016.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Dangerous Use of Controlled Substance)**

7 18. Respondent is subject to disciplinary action under section 4301, subsection (h) for
8 unprofessional conduct in that Respondent, while on duty and working as pharmacist-in-charge at
9 Walgreen's Pharmacy, self administered a controlled substance without a valid prescription and in
10 a manner dangerous to himself or the public, as more fully set forth in paragraph 17, above.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of Laws Governing Controlled Substances/Dangerous Drugs)**

13 19. Respondent is subject to disciplinary action under section 4301, subsection (j) for
14 unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's,
15 obtained, possessed, furnished and/or administered a controlled substance to himself without a
16 valid prescription and by fraud, deceit or subterfuge, in violation of Code section 4060 and Health
17 and Safety Code sections 11170 and 11173, and as more fully set forth in paragraph 17, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Obtaining Controlled Substance by Fraud, Deceit, or Subterfuge)**

20 20. Respondent is subject to disciplinary action under section 4301, subsection (f) for
21 unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's
22 removed a dangerous drug/controlled substances from pharmacy stock when no one was present,
23 and ingested it without a prescription or paying for the drug, as more fully set forth in paragraph
24 17, above.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Violation of Laws Governing Pharmacy)**

27 21. Respondent is subject to disciplinary action under section 4301, subsection (o) for
28 unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's

1 Pharmacy, sold, dispensed or compounded drugs while under the influence of a dangerous drug, in
2 violation of Code section 4327, and as more fully set forth in paragraphs 17-20, above.

3 **DISCIPLINE CONSIDERATIONS**

4 22. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about April 28, 2001, in a prior disciplinary action entitled *In the*
6 *Matter of the Accusation Against Lester Botill* before the Board of Pharmacy, in Case Number
7 2211-A. Respondent's license was suspended for 45 days and thereafter placed on probation for a
8 period of 3 years under terms and conditions for diverting dangerous drugs from his employer
9 Sutter Merced Medical Center Pharmacy to his other employer, Costco Pharmacy in Merced
10 California, without authorization and without compensating Sutter Merced therefor. That decision
11 is now final and is incorporated by reference as if fully set forth.

12 23. Complainant further alleges that on or about October 13, 2015, in a prior action, the
13 Board of Pharmacy issued Citation Number CI 2015 67327 and ordered Respondent to pay a fine
14 of \$1,000.00 for dispensing a drug to the wrong patient. That Citation is now final and is
15 incorporated by reference as if fully set forth.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacist License Number RPH 28416, issued to Lester
20 Botill;

21 2. Ordering Lester Botill to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3; and,

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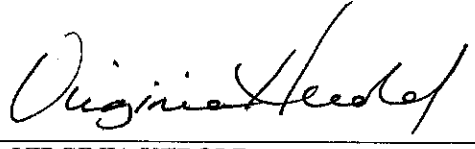
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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/10/16



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

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