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

11 In the Matter of the Accusation Against:

Case No. 5969

12 **ELIZABETH CELESTE GARCIA**
13 **890 Oxford Way**
14 **Benicia, CA 37927**

A C C U S A T I O N

15 **Pharmacist License No. RPH 37927**

16 **Respondent.**

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 September 6, 1983, the Board of Pharmacy issued Pharmacist License
22 Number RPH 37927 to Elizabeth Celeste Garcia (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2018, unless renewed.

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JURISDICTION

3. 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.

4. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

5. 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 PROVISIONS

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

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

• • •

“(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 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.

• • •

“(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

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

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10 7. Section 4022 of the Code states

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

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

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

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

20 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
21 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
23 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

25 9. Section 4060 of the Code states:

26 "No person shall possess any controlled substance, except that furnished to a person upon
27 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
28 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified

1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
8 labeled with the name and address of the supplier or producer.

9 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
10 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
11 devices."

12 10. Section 4081 of the Code states:

13 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
14 or dangerous devices shall be at all times during business hours open to inspection by authorized
15 officers of the law, and shall be preserved for at least three years from the date of making. A
16 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
17 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
18 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
19 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
20 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
21 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

22 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
23 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
24 representative-in-charge, for maintaining the records and inventory described in this section.

25 "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally
26 responsible for acts of the owner, officer, partner, or employee that violate this section and of
27 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or
28 she did not knowingly participate."

1 11. Section 4169 of the Code, in pertinent part, states:

2 "(a) A person or entity shall not do any of the following:

3 "(1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous drugs or dangerous
4 devices at wholesale with a person or entity that is not licensed with the board as a wholesaler,
5 third-party logistics provider, or pharmacy.

6 "(2) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably
7 should have known were adulterated, as set forth in Article 2 (commencing with Section 111250)
8 of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code."

9

10 12. Section 11170 of the Health and Safety Code states, "No person shall prescribe,
11 administer, or furnish a controlled substance for himself."

12 13. Section 11173 of the Health and Safety Code, in pertinent part, states:

13 (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
14 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
15 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

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17 14. Section 111295 of the Health and Safety Code states, "It is unlawful for any person to
18 manufacture, sell, deliver, hold, or offer for sale any drug or device that is adulterated."

19 15. Section 111255 of the Health and Safety Code states, "Any drug or device is
20 adulterated if it has been produced, prepared, packed, or held under conditions whereby it may
21 have been contaminated with filth, or whereby it may have been rendered injurious to health."

22 REGULATORY PROVISIONS

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

24 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
25 Code shall be considered to include complete accountability for all dangerous drugs handled by
26 every licensee enumerated in Sections 4081 and 4332.

27 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
28 available for inspection upon request for at least 3 years after the date of the inventory."

1 COST RECOVERY

2 17. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee 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.

6 DRUGS

7 18. Promethazine with codeine is a scheduled V controlled substance pursuant to Health
8 and Safety code section 11058(c)(1) and a dangerous drug pursuant to Business and Professions
9 Code section 4022. It is used to treat a cough.

10 19. Guaifenesin with codeine is a scheduled V controlled substance pursuant to Health
11 and Safety code section 11058(c)(1) and a dangerous drug pursuant to Business and Professions
12 Code section 4022. It is used to treat a cough.

13 20. Acetaminophen with codeine 300-30 mg is a scheduled III controlled substance
14 pursuant to Health and Safety code section 11056(e)(1) and a dangerous drug pursuant to
15 Business and Professions Code section 4022. It is used to treat mild to moderately severe pain.

16 21. Acetaminophen with codeine 300-60 mg is a scheduled III controlled substance
17 pursuant to Health and Safety code section 11056(e)(1) and a dangerous drug pursuant to
18 Business and Professions Code section 4022. It is used to treat mild to moderately severe pain.

19 22. Clonazepam is a scheduled IV controlled substance pursuant to Health and Safety
20 code section 11057(d)(7) and a dangerous drug pursuant to Business and Professions Code
21 section 4022. It is used to treat seizures, panic disorders, and anxiety.

22 23. Oxycodone is a scheduled II controlled substance pursuant to Health and Safety code
23 section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
24 4022. It is used to treat moderate to severe pain.

25 LUCKY PHARMACY

26 24. On or about August 17, 2016, during an interview conducted by Lucky Pharmacy
27 supervisors and loss prevention staff, Respondent admitted to stealing and ingesting
28 approximately 3 to 4 pints of promethazine with codeine cough syrup, without a prescription

1 while working as a pharmacist-in-charge of a Lucky Pharmacy in Hercules, California, during the
2 months of July 2016 and August 2016. Respondent also admitted to drinking antacid and
3 promethazine with codeine in the break room at the Lucky Pharmacy and returning the bottle to
4 active inventory on the shelf.

5 FIRST CAUSE FOR DISCIPLINE

6 (Theft of controlled substances)

7 25. Respondent has subjected her Pharmacist License to discipline under Code section
8 4301, subdivision (f) in that Respondent stole controlled substances from during the Lucky
9 Pharmacy while working as a pharmacist-in-charge.

10 SECOND CAUSE FOR DISCIPLINE

11 (Unlawful Self Administration of Controlled Substances)

12 26. Respondent has subjected her Pharmacist License to discipline under Code section
13 4301, subdivision (h) in that Respondent unlawfully self-administered controlled substances
14 while working as a pharmacist-in-charge at the Lucky Pharmacy. (Health & Saf. Code, § 11170.)

15 THIRD CAUSE FOR DISCIPLINE

16 (Unlawful Furnishing of Controlled Substances)

17 27. Respondent has subjected her Pharmacist License to discipline under Code section
18 4301, subdivisions (j) and/or (o) in that Respondent unlawfully furnished controlled substances
19 while working as a pharmacist-in-charge at the Lucky Pharmacy. (Bus. & Prof. Code, § 4059.)

20 FOURTH CAUSE FOR DISCIPLINE

21 (Unlawful Possession of Controlled Substances)

22 28. Respondent has subjected her Pharmacist License to discipline under Code section
23 4301, subdivisions (j) and/or (o) in that Respondent unlawfully possessed controlled substances
24 while working as a pharmacist-in-charge at the Lucky Pharmacy. (Bus. & Prof. Code, § 4060.)

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substances by Fraud, Deceit or Subterfuge)

3 29. Respondent has subjected her Pharmacist License to discipline under Code section
4 4301, subdivisions (j) and/or (o) in that Respondent obtained controlled substances by fraud,
5 deceit or subterfuge while working as a pharmacist-in-charge at the Lucky Pharmacy. (Health &
6 Saf. Code, § 11173.)

7 SIXTH CAUSE FOR DISCIPLINE

8 (Offering for Sale Adulterated Drugs)

9 30. Respondent has subjected her Pharmacist License to discipline under Code section
10 4301, subdivisions (j) and/or (o) in that Respondent offered for sale adulterated drugs while
11 working as a pharmacist-in-charge at the Lucky Pharmacy. (Health & Saf. Code, §§ 111295,
12 111255.)

13 SEVENTH CAUSE FOR DISCIPLINE

14 (Failure to Maintain Accurate and Secure Controlled Substances Inventory)

15 31. Respondent has subjected her Pharmacist License to discipline under Code section
16 4301, subdivisions (j) and/or (o) in that Respondent failed to maintain accurate and secure
17 controlled substances inventory while working as a pharmacist-in-charge at the Lucky Pharmacy.
18 (Bus. & Prof. Code, § 4081; Cal. Code Reg., tit. 16, § 1718.)

19 32. During the course of the investigation in the Lucky Pharmacy, the Board's inspector
20 discovered that the Lucky Pharmacy had significant losses of controlled substances while
21 Respondent was working as a pharmacist-in-charge at the pharmacy. Beginning on or about
22 September 13, 2014, when Respondent started as pharmacist-in-charge, and continuing to August
23 17, 2016, the Lucky Pharmacy was unable to account for a loss of 9,667 milliliters of
24 promethazine with codeine, 283 tablets of acetaminophen with codeine 300-30 mg, 450 tablets of
25 acetaminophen with codeine 300-60 mg, 30 tablets of clonazepam, 772 milliliters of Guaifenesin
26 with codeine, and 139 tablets of oxycodone.

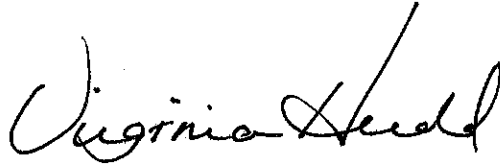
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PRAYER

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 37927, issued to Elizabeth Celeste Garcia
2. Ordering Elizabeth Celeste Garcia 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: 9/29/17



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

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