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

12 In the Matter of the Accusation Against:

Case No. 6076

13 **YANA BUDNITSKY**
P.O. Box 9316
14 Calabasas, CA 91372

A C C U S A T I O N

15 **Registered Pharmacist License No. RPH**
16 **60296**

Respondent.

17
18 Complainant alleges:
19

20 **PARTIES**

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

23 2. On or about October 3, 2007, the Board of Pharmacy issued Pharmacist License
24 Number RPH 60296 to Yana Budnitsky (Respondent). The Pharmacist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on June 30, 2019,
26 unless 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 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b) provides, in pertinent part, that that expiration of a
7 license shall not deprive the Board jurisdiction to proceed with a disciplinary actin during the
8 period within which the license may be renewed, restored, reissued, or reinstated.

9 5. Section 4022 of the Code states:

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

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

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

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

19 6. Section 4059 of the Code states, in relevant part:

20 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
21 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
22 3640.7.

23 7. Section 4060 of the Code states in relevant part:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

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

7 8. Section 4081, subdivision (a), of the Code states as follows:

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

17 9. Section 4300 of the Code states, in pertinent part, that every license issued by the
18 Board is subject to discipline, including suspension or revocation.

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

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

23 ...

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

27 ...

1 “(g) Knowingly making or signing any certificate or other document that falsely represents
2 the existence or nonexistence of a state of facts.”

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

8 ...

9 “(j) The violation of any of the statutes of this state, of any other state, or of the United
10 States regulating controlled substances and dangerous drugs.”

11 ...

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

16 11. Section 4324, subdivision (a) of the Code states as follows:

17 “Every person who signs the name of another, or of a fictitious person, or falsely makes,
18 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
19 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
20 pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county
21 jail for not more than one year.”

22 12. California Health and Safety Code section 11157, which states as follows:

23 “No person shall issue a prescription that is false or fictitious in any respect.”

24 13. California Health and Safety Code section 11166, which states as follows:

25 “No person shall fill a prescription for a controlled substance after six months has elapsed
26 from the date written on the prescription by the prescriber. No person shall knowingly fill a
27 mutilated or forged or altered prescription for a controlled substance except for the addition of the
28

1 address of the person for whom the controlled substance is prescribed as provided by paragraph
2 (3) of subdivision (b) of Section 11164.”

3 14. California Health and Safety Code section 11170, which states as follows:

4 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

5 15. California Health and Safety Code section 11171, which states as follows:

6 “No person shall prescribe, administer, or furnish controlled substance except under the
7 conditions and in the manner provided by this division.”

8 **REGULATORY PROVISIONS**

9 16. California Code of Regulations, title 16, section 1714, subdivision (d), states:

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

14 17. California Code of Regulations, title 16, section 1770, states:

15 “For the purpose of denial, suspension, or revocation of a personal or facility license
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
17 crime or act shall be considered substantially related to the qualifications, functions or duties of a
18 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
19 licensee or registrant to perform the functions authorized by his license or registration in a manner
20 consistent with the public health, safety, or welfare.”

21 **COST RECOVERY**

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

26 **CONTROLLED SUBSTANCES**

27 19. “Hydrocodone/APAP 10-325” and “Hydrocodone/APAP 10-500” are Schedule II
28 controlled substances, as defined in Health and Safety Code section 11055(b)(1)(I), and are

1 categorized as dangerous drugs pursuant to section 4022 of the Code. The brand names for these
2 drugs are Norco and Vicodin.¹

3 **FACTUAL ALLEGATIONS**

4 20. At all times mentioned herein, Respondent was employed by the AHF Pharmacy
5 (“AHF”), located at 6210 Sunset Blvd., Los Angeles, CA. Respondent served as the Pharmacist-
6 in-Charge until her resignation on September 16, 2016. At all times mentioned herein,
7 Respondent also served as a fill-in pharmacist at Norms Pharmacy, located at 18368 Clark St.,
8 Tarzana, CA.

9 21. On or about August 26, 2016, and August 27, 2016, the Board received two emails
10 from a complainant. The complainant alleged that Respondent had committed the following
11 violations: self-furnished hydrocodone with a photocopy of a previously used script, self-
12 furnished hydrocodone with no prescription, and documented a Schedule II (“CII”) fill with a
13 prescription number for Retin-A. The complainant also reported that Respondent self-furnished
14 hydrocodone with a quantity greater than prescribed and failed to log incoming CII orders into
15 inventory.

16 22. On or about October 11, 2016, the Board inspector performed a drug audit on AHF
17 for the time period of October 31, 2015 through September 22, 2016. The drug audit revealed a
18 negative variance in the following: Hydrocodone/APAP 7.5-325 was missing 100 tablets; and
19 Hydrocodone/APAP 10-325 was missing 415 tablets, as follows:

- 20 • Respondent altered the date on an expired prescription (Rx 169092 – 30 tablets of
21 Hydrocodone/APAP 10-325) from 1/11/15 to 11/11/15. Respondent dispensed the
22 prescription to herself on or about 1/11/16.
- 23 • On or about March 11, 2016, Respondent dispensed a prescription to herself (Rx
24 171258 - 30 tablets of Hydrocodone/APAP 10-325) using a photocopy of a previously
25 used prescription dated 1/11/16.

26
27 ¹ Hydrocodone /APAP 10-500 refers to a drug that contains 10 mg of hydrocodone and
28 500 mg of acetaminophen (Tylenol). APAP is an abbreviation of acetyl-para-aminophenol - the
chemical name of acetaminophen.

1 • On or about March 17, 2016, Respondent signed out 90 tablets of
2 Hydrocodone/APAP 10-325 (Rx 171452) in the perpetual inventory log. The prescription
3 was for Patient G.M. and the prescribing physician authorized only 60 tablets for the
4 patient. Pharmacy records document that only 60 tablets were dispensed and billed to the
5 patient.

6 • On or about March 31, 2016, Respondent signed out 30 tablets of
7 Hydrocodone/APAP 10-325 (Rx 171634) in the perpetual inventory log. However, this
8 prescription was written for Patient S.F., who was prescribed Prevident dental paste, a
9 non-controlled medication.

10 • On or about April 7, 2016, Respondent dispensed 30 tablets of Hydrocodone/APAP
11 10-325 for Rx 172072. The electronic prescription for Rx 172072 was issued to Patient
12 P.P.A. for Retin-A .1% cream.² This prescription number had been entered into the
13 perpetual inventory log for hydrocodone/APAP 10-325 and Respondent signed out 30
14 tablets. AFH produced a prescription history for Patient P.P.A., which showed that AHF
15 had never dispensed hydrocodone/APAP to Patient P.P.A.

16 • On or about April 14, 2016, Respondent dispensed 60 tablets of
17 Hydrocodone/APAP 10-325 to herself, although only 30 were prescribed (Rx 172354).

18 • On or about April 21, 2016, Respondent signed out 90 tablets of
19 Hydrocodone/APAP 10-325 (Rx 172564) in the perpetual inventory log. Pharmacy
20 records, however, document that 60 tablets were dispensed, as authorized by the
21 prescribing physician.

22 • On or about April 28, 2016, Respondent signed out 120 tablets of
23 Hydrocodone/APAP 10-325 (Rx 172766) on the perpetual inventory log. This prescription
24 was written for Patient W.D., who was prescribed Atorvastatin, a non-controlled,
25 cholesterol-lowering medication.

26
27 ² Retin-A .1% cream is a topical skin cream used to treat skin problems such as acne or
28 skin discoloration.

1 • On or about May 20, 2016, Respondent dispensed 30 tablets of
2 Hydrocodone/APAP 10-325 (Rx 173485) to herself using a photocopy of a used
3 prescription (Rx 176476).

4 • On or about September 1, 2016, Respondent dispensed 30 tablets of
5 Hydrocodone/APAP 10-500 (Rx 176476) to herself. However, the prescription called for
6 Hydrocodone/APAP 10-325.

7 23. On or about September 30, 2016, the Board inspector performed an inspection at
8 Norms Pharmacy, where Respondent was a fill-in pharmacist. During the inspection, the Board
9 Inspector reviewed Respondent's Patient Drug History, for the time period of May 21, 2012
10 through September 30, 2016. The inspection revealed the following:

11 • On or about December 16, 2015, Respondent dispensed Rx 795939 (20 tablets of
12 Hydrocodone/APAP 5-325) to herself.

13 • On or about March 4, 2016, the original hard copy was filed at Norms Pharmacy
14 and the Pharmacist-in-Charge dispensed Rx 802160 (30 tablets of Hydrocodone/APAP 5-
15 325) to Respondent. Respondent used a photocopy to fill this same prescription again at
16 AHF on March 11, 2016, under Rx 171258.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Dishonest Acts)**

19 24. Respondent is subject to disciplinary action pursuant to sections 4301, subdivision
20 (f) in that Respondent diverted controlled substances as follows: Respondent altered the date on a
21 prescription (Rx 169092) from 1/11/15 to 11/15/15 and then dispensed the prescription to herself
22 on 1/11/16; dispensed Hydrocodone/APAP to herself using photocopies of previously used
23 prescriptions (Rx 171258 and 173485) ; dispensed greater quantities of Hydrocodone/APAP to
24 herself than were prescribed (Rx 172354, Rx 171452, Rx 172564); dispensed formulations of
25 hydrocodone/APAP to herself that were different from what was prescribed (Rx 176476); and
26 removed Hydrocodone/APAP from the inventory when using prescriptions for other drugs (Rx
27 171634 , Rx 172072, 172766). Complainant refers to, and by this reference incorporates, the
28 allegations set forth above in paragraphs 20 through 23 above, as though set forth fully.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Possession of Controlled Substances Obtained Through Forged Prescription)**

3 27. Respondent is subject to disciplinary action pursuant to sections 4324, subdivision
4 (a), 4301, subdivision (o) for violating Health and Safety Code sections 11157 and 11166 in that
5 Respondent dispensed forged prescriptions to herself as follows: Respondent altered the date on a
6 prescription from 1/11/15 to 11/15/15 and then dispensed the prescription to herself on 1/11/16
7 (Rx 169092); Respondent dispensed Hydrocodone/APAP to herself using a photocopies of a
8 previously used prescriptions (Rx 171258 and Rx 173485). Complainant refers to, and by this
9 reference incorporates, the allegations set forth above in paragraphs 20 through 23 above, as
10 though set forth fully.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Furnishing Dangerous Drug Without a Prescription)**

13 28. Respondent is subject to disciplinary action pursuant to Code section 4059,
14 subdivision (a) in that Respondent diverted dangerous drugs without a prescription as follows:
15 Respondent altered the date on a prescription (Rx 169092) from 1/11/15 to 11/15/15 and then
16 dispensed the prescription to herself on 1/11/16; dispensed Hydrocodone/APAP to herself using
17 photocopies of previously used prescriptions (Rx 171258 and 173485); dispensed greater
18 quantities of Hydrocodone/APAP to herself than were prescribed (Rx 172354, Rx 171452, Rx
19 172564); dispensed formulations of hydrocodone/APAP to herself that were different from what
20 was prescribed (Rx 176476); and removed Hydrocodone/APAP from the inventory when using
21 prescriptions for other drugs (Rx 171634 , Rx 172072, 172766). Complainant refers to, and by
22 this reference incorporates, the allegations set forth above in paragraphs 20 through 23 above, as
23 though set forth fully.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Prescribing and Furnishing Controlled Substance for Self)**

26 29. Respondent is subject to disciplinary action pursuant to section 4301, subdivision
27 (o) for violating Health and Safety Code sections 11170 and 11171, in that Respondent diverted
28 controlled substances to herself as follows: Respondent altered the date on a prescription (Rx

1 169092) from 1/11/15 to 11/15/15 and then dispensed the prescription to herself on 1/11/16;
2 dispensed Hydrocodone/APAP to herself using photocopies of previously used prescriptions (Rx
3 171258 and 173485); dispensed greater quantities of Hydrocodone/APAP to herself than were
4 prescribed (Rx 172354, Rx 171452, Rx 172564); dispensed formulations of hydrocodone/APAP
5 to herself that were different from what was prescribed (Rx 176476); and removed
6 Hydrocodone/APAP from the inventory when using prescriptions for other drugs (Rx 171634 ,
7 Rx 172072, 172766). Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraphs 20 through 23 above, as though set forth fully.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Proper Records)**

11 30. Respondent is subject to disciplinary action pursuant to Code section 4081,
12 subdivision (a) in that while Respondent was employed as the Pharmacist-in-Charge at AHF,
13 acquisition and disposition records could not account for the loss of 100 tablets of Hydrocodone
14 /APAP 7.5-3.25 and 415 tablets of Hydrocodone/APAP 10-325. Complainant refers to, and by
15 this reference incorporates, the allegations set forth above in paragraphs 20-23 above, as though
16 set forth fully.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Lack of Operational Standards and Security)**

19 31. Respondent is subject to disciplinary action pursuant to section 4301, subdivision
20 (o) for violating California Code of Regulations section 1714, in that while Respondent was
21 employed as the Pharmacist-in-Charge at AHF, she diverted 330 tablets of Hydrocodone/APAP
22 10-325 through theft and filling the following illegitimate prescriptions: Rx 169092, Rx 171258,
23 Rx 172354, Rx 173485, Rx 176476, Rx 172072, Rx 171452, Rx 171634, Rx 172564, Rx 172766.
24 In addition, a drug audit revealed that there was a negative variance of 100 tablets of
25 Hydrocodone /APAP 7.5-3.25 and 415 tablets of Hydrocodone/APAP 10-325. Complainant refers
26 to, and by this reference incorporates, the allegations set forth above in paragraphs 20-23 above,
27 as though set forth fully.

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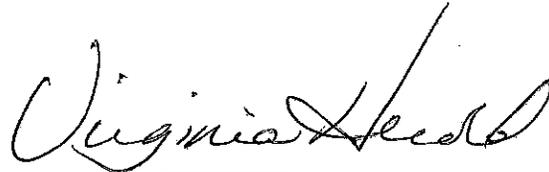
PRAYER

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 Registered Pharmacist License Number RPH 60296, issued to Yana Budnitsky
2. Ordering Yana Budnitsky 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:

7/19/17



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

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