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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 Statement of Issues
12 Against:
13 **LISA FAMILY PHARMACY INC., DBA**
14 **LISA FAMILY PHARMACY**
15 **LISA SUSANNE HOHENTHANER,**
16 **PRESIDENT**
17 **Community Pharmacy Permit Applicant**
18 Respondent.

Case No. 5986

STATEMENT OF ISSUES

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (“Complainant”) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about June 30, 2015, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Community Pharmacy Permit from Lisa Susanne Hohenthanner as the
24 President of Lisa Family Pharmacy Inc., doing business as Lisa Family Pharmacy
25 (“Respondent”), with Lisa Susanne Hohenthanner (“Hohenthanner”) as Pharmacist-in-Charge. On
26 or about May 29, 2015, Hohenthanner certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Board denied the application on
28 March 18, 2016.

1 **RELATED LICENSES AND PENDING ACCUSATION NO. 5757**

2 **Lisa Family Pharmacy – Original Pharmacy Permit No. PHY 51582**

3 3. On or about October 9, 2013, the Board issued Original Pharmacy Permit Number
4 PHY 51582 to Respondent at an address in Magalia, with Hohenthaner as President and
5 Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and effect at all times
6 relevant to the allegations brought herein and will expire on October 1, 2017, unless renewed.

7 4. On or about September 16, 2016, Complainant brought Accusation No. 5757 solely in
8 her official capacity as the Executive Officer of the Board against Respondent.

9 **Lisa Susanne Hohenthaner – Pharmacist License No. RPH 63937**

10 5. On or about July 2, 2010, the Board issued Original Pharmacist License Number
11 RPH 63937 to Lisa Susanne Hohenthaner (“Hohenthaner”). The Original Pharmacist License
12 was in full force and effect at all times relevant to the allegations brought herein and will expire
13 on January 31, 2018, unless renewed.

14 6. On or about September 16, 2016, Complainant brought Accusation No. 5757 solely in
15 her official capacity as the Executive Officer of the Board against Hohenthaner.

16 **JURISDICTION**

17 7. This Statement of Issues is brought before the Board of Pharmacy (“Board”),
18 Department of Consumer Affairs, under the authority of the following laws. All section
19 references are to the Business and Professions Code (“Code”) unless otherwise indicated.

20 8. Code section 480 states, in pertinent part:

21 (a) A board may deny a license regulated by this code on the grounds that the
22 applicant has one of the following:

23 (3) (A) Done any act that if done by a licentiate of the business or profession in
 question, would be grounds for suspension or revocation of license.

24 (B) The board may deny a license pursuant to this subdivision only if the crime
25 or act is substantially related to the qualifications, functions, or duties of the
 business or profession for which application is made.

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STATUTORY AND REGULATORY PROVISIONS

9. Code section 4301 states, in pertinent part:

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

(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.

10. Code section 4113(c) states, “The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.”

11. Code section 4023.5 states, “For the purposes of this chapter, ‘direct supervision and control’ means that a pharmacist is on the premises at all times and is fully aware of all activities performed by either a pharmacy technician or intern pharmacist.”

12. California Code of Regulations (“Regulations), title 16, section 1714(d) states, in pertinent part:

Each pharmacist while on duty shall 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. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

13. Code section 4115 states, in pertinent part:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

(h) The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist.

14. Regulations section 1793.7 states, in pertinent part:

(b) Pharmacy technicians must work under the direct supervision of a pharmacist and in such a relationship that the supervising pharmacist is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

1 (e) A pharmacist shall be responsible for all activities of pharmacy technicians
2 to ensure that all such activities are performed completely, safely and without risk of
3 harm to patients.

4 15. Regulations section 1793.1 states, in pertinent part,

5 Only a pharmacist, or an intern pharmacist acting under the supervision of a
6 pharmacist, may:

7 (a) Receive a new prescription order orally from a prescriber or other person
8 authorized by law.

9 (e) Consult with any prescriber, nurse or other health care professional or
10 authorized agent thereof.

11 16. Code section 4070(a) states:

12 Except as provided in Section 4019 and subdivision (b), an oral or an electronic
13 data transmission prescription as defined in subdivision (c) of Section 4040 shall as
14 soon as practicable be reduced to writing by the pharmacist and shall be filled by, or
15 under the direction of, the pharmacist. The pharmacist need not reduce to writing the
16 address, telephone number, license classification, federal registry number of the
17 prescriber or the address of the patient or patients if the information is readily
18 retrievable in the pharmacy.

19 17. Regulation 1717(c) states:

20 Promptly upon receipt of an orally transmitted prescription, the pharmacist
21 shall reduce it to writing, and initial it, and identify it as an orally transmitted
22 prescription. If the prescription is then dispensed by another pharmacist, the
23 dispensing pharmacist shall also initial the prescription to identify him or herself. All
24 orally transmitted prescriptions shall be received and transcribed by a pharmacist
25 prior to compounding, filling, dispensing, or furnishing. Chart orders as defined in
26 section 4019 of the Business and Professions Code are not subject to the provisions of
27 this subsection.

28 18. United States Code, title 21, section 829(b) states:

Schedule III and IV substances. Except when dispensed directly by a
practitioner, other than a pharmacist, to an ultimate user, no controlled substance in
schedule III or IV, which is a prescription drug as determined under the Federal Food,
Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without a
written or oral prescription in conformity with section 503(b) of that Act [21 USCS §
353(b)]. Such prescriptions may not be filled or refilled more than six months after
the date thereof or be refilled more than five times after the date of the prescription
unless renewed by the practitioner.

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1 19. The Code of Federal Regulations, title 21, section 1306.22(a) states:

2 No prescription for a controlled substance listed in Schedule III or IV shall be
3 filled or refilled more than six months after the date on which such prescription was
4 issued. No prescription for a controlled substance listed in Schedule III or IV
5 authorized to be refilled may be refilled more than five times.

6 20. Code section 4307 states, in pertinent part:

7 (a) Any person who has been denied a license or whose license has been
8 revoked or is under suspension, or who has failed to renew his or her license while it
9 was under suspension, or who has been a manager, administrator, owner, member,
10 officer, director, associate, or partner of any partnership, corporation, firm, or
11 association whose application for a license has been denied or revoked, is under
12 suspension or has been placed on probation, and while acting as the manager,
13 administrator, owner, member, officer, director, associate, or partner had knowledge
14 of or knowingly participated in any conduct for which the license was denied,
15 revoked, suspended, or placed on probation, shall be prohibited from serving as a
16 manager, administrator, owner, member, officer, director, associate, or partner of a
17 licensee as follows:

18 (1) Where a probationary license is issued or where an existing license is
19 placed on probation, this prohibition shall remain in effect for a period not to exceed
20 five years.

21 (2) Where the license is denied or revoked, the prohibition shall continue until
22 the license is issued or reinstated.

23 (b) "Manager, administrator, owner, member, officer, director, associate, or
24 partner," as used in this section and Section 4308, may refer to a pharmacist or to any
25 other person who serves in that capacity in or for a licensee.

26 **BACKGROUND INFORMATION FOR INVESTIGATION OF ORIGINAL PHARMACY**

27 **LICENSE AS SET FORTH IN ACCUSATION NO. 5757**

28 21. On or about September 2, 2015, a Board inspector (the "inspector") arrived prior to
09:00 hours at the premises of Respondent in Magalia, California, to conduct an inspection. The
inspector attempted to enter, but the premises was locked and appeared uninhabited. The
inspector observed a car drive behind the store and the door to the store was subsequently
unlocked. At approximately 09:05 hours, the inspector entered the facility. The inspector
approached the counter, which was attended to by pharmacy technician ("TCH") "J.M.", and
asked to see the pharmacist. TCH J.M. told the inspector that Hohenthauer was on the phone.
The inspector observed two more individuals, later identified as pharmacy technicians "O.W."
and "S.B.", enter the premises. The inspector again asked the whereabouts of the pharmacist.

1 TCH J.M. finally told the inspector that she had unlocked and accessed the pharmacy and that
2 Hohenthauer usually arrived at 09:30 hours. The inspector said the pharmacy needed to be closed.
3 TCH J.M. locked the doors to the pharmacy with the keys TCH J.M. had in her possession. The
4 inspector then retained control of the keys to the pharmacy until Hohenthauer arrived at
5 approximately 09:20 hours.

6 22. In the course of the inspection, Hohenthauer confirmed that two scripts for Tramadol,
7 dated February 26, 2015, and February 27, 2015, had been transcribed by pharmacy technicians,
8 who printed the initials "LH", where the pharmacist was to sign or initial. Tramadol is a Schedule
9 IV controlled substance pursuant to Code of Federal Regulations, title 21, section 1308.14(b)(3).

10 23. The investigator found a script for Temazepam containing the notation "OK per Ann
11 to change to one 30 mg tab and one 15 mg. tab to equal 45 mg." The note was dated March 11,
12 2015, and was initialed by TCH J.M.. Temazepam is a Schedule IV controlled substance
13 pursuant to Code of Federal Regulations, title 21, section 1308.14(c)(50).

14 24. On or about November 10, 2015, the inspector returned to Respondent's premises.
15 The investigator obtained a patient profile for patient "D.C." for the period November 10, 2013 to
16 November 10, 2015. The inspector noted that Respondent refilled D.C.'s prescription for
17 Carisoprodol, originally prescribed on April 27, 2015, seven times between the original fill date,
18 April 27, 2015, and July 27, 2015. Carisoprodol is designated a Schedule IV controlled substance
19 pursuant to Code of Federal Regulations, title 21, section 1308.14(c)(6).

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 (Violations of Federal and State Laws or Regulations Governing Pharmacy)

22 25. Paragraphs 21 through 24, above, are incorporated herein as though fully set forth.
23 Respondent's application is subject to denial pursuant to Code section 480(a)(3)(A), in that as set
24 forth in Accusation No. 5757 Respondent¹ committed acts that, if done by a licentiate of the
25 business or profession in question, would be grounds for suspension or revocation of license

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27 ¹ Hohenthauer, as Pharmacist-in-Charge, also violated statutes and regulations applicable
28 to governing pharmacy as set forth in Accusation No. 5757.

1 under Code section 4301(o), by violating statutes and regulations governing pharmacy, as
2 follows:

3 a. On or about April 22, 2014, Respondent failed to ensure the security of the
4 prescription department in that in the course of an inspection of the pharmacy, "P.P", a Board
5 inspector, waited approximately 40 minutes for Hohenthauer to return to the pharmacy, in
6 violation of Regulation 1714(d).

7 b. On or about September 2, 2015, Respondent failed to ensure that possession of a key
8 to the pharmacy was restricted to a pharmacist, in violation of Regulation 1714(d).

9 c. On or about September 2, 2015, Respondent failed to ensure that J.M., O.W., and
10 S.B., pharmacy technicians and employees of Respondent, were under the direct supervision and
11 control of a pharmacist, in violation of Code section 4023.5, and Regulation sections 1793.7(b)
12 and 4115.

13 d. On or about February 26, 2015, and February 27, 2015, Respondent allowed someone
14 other than a pharmacist to transcribe oral prescriptions for Tramadol, a controlled substance, in
15 violation of Code section 4070(a) and Regulations 1717(c) and 1793.1(a).

16 e. Between the original prescription date on or about April 27, 2015, and July 27, 2015,
17 Respondent refilled D.C.'s prescription for Carisoprodol, a Schedule IV controlled substance
18 pursuant to Code of Federal Regulations, title 21, section 1308.14(c)(6), seven times, in violation
19 of United States Code, title 21, section 829(b), and the Code of Federal Regulations, title 21,
20 section 1306.22.

21 **PRAYER**

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

24 1. Denying the application of Lisa Family Pharmacy Inc., doing business as Lisa Family
25 Pharmacy for a Community Pharmacy License;

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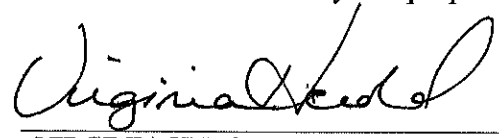
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2. Taking such other and further action as deemed necessary and proper.

DATED: 11/30/16



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

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