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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3181

12 **PATRICIA KATHERINE BYRD**
3565 Kirk Ridge Street
13 Santa Rosa, California 95403

DEFAULT DECISION
AND ORDER

14 Pharmacist License No. RPH 46869

[Gov. Code, §11520]

15 Respondent.

16 **FINDINGS OF FACT**

17 1. On or about September 24, 2008, Complainant Virginia Herold, in her
18 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
19 Affairs, filed Accusation No. 3181 against Patricia Katherine Byrd (Respondent) before the
20 Board of Pharmacy.

21 2. On or about March 7, 1994, the Board of Pharmacy (Board) issued
22 Pharmacist License No. RPH 46869 to Respondent. The Pharmacist License was in full force
23 and effect at all times relevant to the charges brought herein and will expire on July 31, 2009,
24 unless renewed.

25 3. On or about September 29, 2008, Shontane McElroy, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3181
27 and accompanying documents to Respondent's address of record with the Board, which was and
28

1 is: 3565 Kirk Ridge Street, Santa Rosa, California 95403. A copy of the Accusation is attached
2 as Exhibit "A," and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about October 6, 2008, the aforementioned documents were signed
6 for on behalf of the Respondent, as noted on the certified mail receipt from the U.S. Postal
7 Service.

8 6. Government Code section 11506(c) states, in pertinent part:

9 The respondent shall be entitled to a hearing on the merits if the
10 respondent files a notice of defense, and the notice shall be deemed
11 a specific denial of all parts of the accusation not expressly
12 admitted. Failure to file a notice of defense shall constitute a
waiver of respondent's right to a hearing, but the agency in its
discretion may nevertheless grant a hearing.

13 7. Respondent failed to file a Notice of Defense within 15 days after service
14 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
15 Accusation No. 3181.

16 8. California Government Code section 11520(a) states, in pertinent part:

17 If the respondent either fails to file a notice of defense or to appear
18 at the hearing, the agency may take action based upon the
19 respondent's express admissions or upon other evidence and
affidavits may be used as evidence without any notice to
respondent.

20 9. Pursuant to its authority under Government Code section 11520, the Board
21 finds Respondent is in default. The Board will take action without further hearing and, based on
22 the evidence on file herein, finds that the allegations in Accusation No. 3181 are true.

23 10. The total costs for investigation and enforcement in connection with the
24 Accusation are \$2,823.25 as of November 13, 2008.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Patricia Katherine Byrd has subjected her Pharmacist License No. RPH 46869 to discipline.
2. A copy of the Accusation is attached.
3. The agency has jurisdiction to adjudicate this case by default.
4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation:
 - a. Business and Professions Code (Code) section 4301, subdivisions (d) and (f), (Unprofessional Conduct: Commission of Acts of Dishonesty);
 - b. Code section 4301, subdivisions (j) and (o), for violating Code section 4059 (Unprofessional Conduct: Unlawfully Furnishing Dangerous Drugs without a Prescription);
 - c. Code section 4301, subdivisions (j) and (o), for violating state statutes regulating controlled substances and dangerous drugs (Code sections 4059 and 4060 and Health and Safety Code sections 11158, 11170, 11171, 11173, subdivision (a), and 11350, subdivision (a)) (Unprofessional Conduct: Unlawfully Possessing Controlled Substances and Dangerous Drugs);
 - d. Code section 4301, subdivisions (j) and (o), for violating Code section 4060 and Health and Safety Code section 11158, subdivision (a), (Unprofessional Conduct: Unlawfully Furnishing Controlled Substances without a Prescription);
 - e. Code section 4301, subdivision (o), in conjunction with Code section 4327 (Unprofessional Conduct: Dispensing Drugs While Under the Influence); and
 - f. Code section 4301, subdivision (h), (Unprofessional Conduct: Self-Administration of Controlled Substances).

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED January 6, 2009

By Kenneth H. Schell
KENNETH H. SCHELL
Board President

Attachment: Exhibit "A" - Accusation No.3181

Exhibit "A"
Accusation No. 3181

1 EDMUND G. BROWN JR.
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9 **BOARD OF PHARMACY**
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3181

13 **PATRICIA KATHERINE BYRD**
3565 Kirk Ridge Street
Santa Rosa, California 95403

A C C U S A T I O N

14 Pharmacist License No. RPH 46869

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 7, 1994, the Board of Pharmacy issued Pharmacist
22 License Number RPH 46869 to Patricia Katherine Byrd (Respondent). The Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 July 31, 2009, unless renewed.

25 **JURISDICTION**

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

4. Section 4300 of the Code states, in pertinent part:

(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. . . .

STATUTORY PROVISIONS

5. Section 4022 of the Code states:

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

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

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

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

6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

7. Section 4060 of the Code states, in pertinent part:

No person shall 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

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

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

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

19 . . .

20 (d) The clearly excessive furnishing of controlled substances in
21 violation of subdivision (a) of Section 11153 of the Health and
22 Safety Code.

23 . . .

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

28 . . .

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

. . .

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

. . .

(o) Violating or attempting to violate, directly or indirectly, . . .
any provision or term of this chapter or of the applicable federal
and state laws and regulations governing pharmacy, including

1 regulations established by the board or by any other state or federal
2 regulatory agency. . . .

3 9. Section 4327 of the Code states that any person who, while on duty, sells,
4 dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic
5 beverages shall be guilty of a misdemeanor.

6 10. Health and Safety Code section 11158, subdivision (a), provides that no
7 controlled substance classified in Schedule II, III, IV, or V may be dispensed without a
8 prescription.

9 11. Health and Safety Code section 11170 provides that no person shall
10 prescribe, administer, or furnish a controlled substance for herself.

11 12. Health and Safety Code section 11171 provides that no person shall
12 prescribe, administer, or furnish a controlled substance except under the conditions and in the
13 manner provided by the state Uniform Controlled Substances Act, Health and Safety Code
14 section 11000 et seq.

15 13. Health and Safety Code section 11173(a) provides, in pertinent part, that
16 no person shall obtain, or attempt to obtain controlled substances by fraud, deceit,
17 misrepresentation, or subterfuge.

18 14. Health and Safety Code section 11350, subdivision (a), provides that no
19 person shall possess a controlled substance without a prescription.

20 COST RECOVERY

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

25 DRUGS

26 16. **Fentanyl** is a Schedule II controlled substance as designated by Health and
27 Safety Code section 11055, subdivision (c)(8), and a dangerous drug within the meaning of Code
28 section 4022. Fentanyl is a strong analgesic, pharmacodynamically similar to Meperidine and
Morphine.

1 17. **Furosemide** is the generic name for the trade name drug Lasix. It is a
2 dangerous drug within the meaning of Code section 4022. Furosemide is a diuretic used to treat
3 congestive heart failure and edema and but is also illicitly used as a masking agent for other
4 drugs.

5 18. **Hydrocodone** is the generic name for the trade name drug Vicodin or
6 Norco, which is designated as a narcotic drug and a Schedule III controlled substance by Health
7 and Safety Code section 11056, subdivision (e)(4), and as a dangerous drug within the meaning
8 of Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain and is
9 qualitatively similar to Codeine.

10 19. **Verapamil** is a dangerous drug within the meaning of Code section 4022.
11 It is used to treat irregular heartbeats and high blood pressure, but is also used to boost the
12 analgesic effect of morphine and in inhibiting some signs of Morphine withdrawal.

13 20. **Zolpidem** is the generic name for the trade name drug Ambien. It is a
14 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32)
15 and a dangerous drug within the meaning of Code section 4022. Zolpidem is a depressant drug
16 and is used for the short-term treatment of insomnia.

17 **FACTUAL BACKGROUND**

18 21. On or about March 2007 through May 2007, Respondent, while employed
19 as a pharmacist by Walgreen's Pharmacy (Walgreen's) in Santa Rosa, California, diverted
20 controlled substances and dangerous drugs from the pharmacy supply, including the following:
21 Fentanyl, Furosemide, Hydrocodone, Verapamil, and Zolpidem. During the aforementioned time
22 period, 9,887 tablets of Hydrocodone-containing medications and 4 tablets of Fentanyl were
23 unaccounted for in the pharmacy supply. The exact quantities of the drugs diverted by
24 Respondent and the exact dates of her diversion are unknown.

25 22. Respondent, by her own admission, diverted Verapamil, Furosemide,
26 Zolpidem, and approximately 100 tablets of Hydrocodone-containing medications from the

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1 pharmacy supply at Walgreen's during the approximate period of time between March 2007 and
2 May 2007. Respondent was terminated from employment at Walgreen's on or about May 18,
3 2007.

4 23. Respondent, by her own admission, was under the influence of dangerous
5 drugs, including Hydrocodone-containing medications, on approximately 10 occasions while
6 working as a pharmacist at Walgreen's.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct: Commission of Acts of Dishonesty)

9 24. Respondents' license is subject to discipline for unprofessional conduct
10 under Code section 4301, subdivisions (d) and (f), for committing acts involving moral turpitude,
11 dishonesty, fraud, deceit, or corruption in that she stole and diverted numerous controlled
12 substances and dangerous drugs during her employment with Walgreen's, as set forth in
13 Paragraphs 21-23, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct: Unlawfully Furnishing Dangerous Drugs without a Prescription)

16 25. Respondent is subject to discipline for unprofessional conduct under Code
17 section 4301, subdivisions (j) and (o), for violating Code section 4059 in that she furnished
18 dangerous drugs to herself without a prescription during her employment with Walgreen's, as set
19 forth in Paragraphs 21-23, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct: Unlawfully Possessing Controlled Substances and Dangerous Drugs)

22 26. Respondent is subject to discipline for unprofessional conduct under Code
23 section 4301, subdivisions (j) and (o), for violating state statutes regulating controlled substances
24 and dangerous drugs, including but not limited to Code sections 4059 and 4060 and Health and
25 Safety Code sections 11158, 11170, 11171, 11173, subdivision (a), and 11350, subdivision (a),
26 in that Respondent unlawfully administered, obtained, and possessed controlled substances and
27 dangerous drugs, by fraud and deceit, during her employment as a pharmacist at Walgreen's, as
28 set forth in Paragraphs 21-23, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Unlawfully Furnishing Controlled Substances without a Prescription)

3 27. Respondent's license is subject to discipline for unprofessional conduct
4 under Code section 4301, subdivisions (j) and (o), for violating Code section 4060 and Health
5 and Safety Code section 11158, subdivision (a), in that she furnished controlled substances to
6 herself without a prescription during her employment with Walgreen's, as set forth in Paragraphs
7 21-23, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct: Dispensing Drugs While Under the Influence)

10 28. Respondent is subject to discipline for unprofessional conduct under Code
11 section 4301 (o) in conjunction with Code section 4327 for dispensing drugs while under the
12 influence of dangerous drugs as set forth in the allegation Paragraphs 21-23, above.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct: Self-Administration of Controlled Substances)

15 29. Respondent is subject to discipline for unprofessional conduct under Code
16 section 4301, subdivision (h), for unprofessional conduct in that she administered to herself
17 controlled substances and used dangerous drugs during her employment as a pharmacist at
18 Walgreen's, as set forth in Paragraphs 21-23, above.

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1 PRAYER

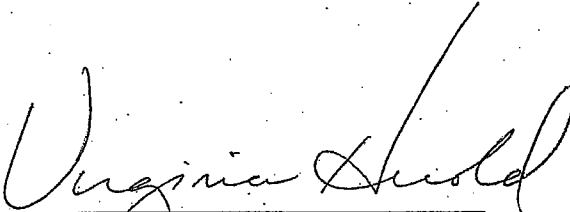
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacist License Number RPH 46869, issued
5 to Patricia Katherine Byrd.

6 2. Ordering Patricia Katherine Byrd to pay the Board of Pharmacy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

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

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11 DATED: 9/24/08

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13 
14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant
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DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

In the Matter of the Accusation Against: PATRICIA KATHERINE BYRD

Agency No.: 3181

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

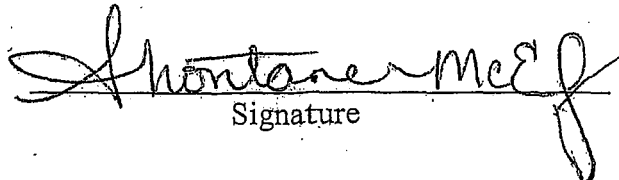
On September 29, 2008, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION, REQUEST FOR DISCOVERY, NOTICE OF DEFENSE (2 copies) and DISCOVERY STATUTES** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT, ACCUSATION, REQUEST FOR DISCOVERY, NOTICE OF DEFENSE (2 copies) and DISCOVERY STATUTES** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

Patricia Katherine Byrd
3565 Kirk Ridge Street
Santa Rosa, CA 95403
Certified Article No. 7000 0520 0024 6379 5347

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 29, 2008, at Oakland, California.

SHONTANE MCELROY

Declarant


Signature