

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

In the Matter of the Accusation Against:

GORDON ALLEN NELSON
218 Pasteur Place
Placentia, CA 92870

Pharmacist License No. RPH 31048

Respondent.

Case No. 5132

OAH No. 201610714

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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

10 In the Matter of the Accusation Against:

Case No. 5132

11 **GORDON ALLEN NELSON**

OAH No. 2016010714

12 218 Pasteur Place
13 Placentia, CA 92870

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Pharmacist License No. RPH 31048**

15 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

- 19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20 She brought this action solely in her official capacity and is represented in this matter by Kamala
21 D. Harris, Attorney General of the State of California, by Helene E. Rouse, Deputy Attorney
22 General.
23 2. Gordon Allen Nelson (Respondent) is representing himself in this proceeding and has
24 chosen not to exercise his right to be represented by counsel.
25 3. On or about July 29, 1977, the Board of Pharmacy issued Pharmacist License No.
26 RPH 31048 to Gordon Allen Nelson (Respondent). The Pharmacist License expired on July 31,
27 2013, and has not been renewed.

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JURISDICTION

4. Accusation No. 5132 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 27, 2015. The Respondent timely filed his Notice of Defense contesting the Accusation. The First Amended Accusation (Accusation) was filed on May 11, 2016 and served on Respondent on May 12, 2016. A copy of Accusation No. 5132 is attached as **Exhibit A** and incorporated by reference.

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ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 5132. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5132, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 31048 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

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CONTINGENCY

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2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
6 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
12 copies of this Stipulated Surrender of License and Order, including Portable Document Format
13 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

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23 IT IS HEREBY ORDERED that Pharmacist License No. RPH 31048, issued to Respondent
24 Gordon Allen Nelson, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Pharmacist License and the acceptance of the
26 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
27 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
28 license history with the Board of Pharmacy.

1 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the
2 effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
4 issued, his wall certificate on or before the effective date of the Decision and Order.

5 4. Respondent understands and agrees that if he ever files an application for licensure or
6 a petition for reinstatement in the State of California, the Board shall treat it as a new application
7 for licensure.

8 5. Respondent may not apply for any license, permit, or registration from the board for
9 three years from the effective date of this decision. Respondent stipulates that should he apply for
10 any license from the board on or after the effective date of this decision, all allegations as set forth
11 in the accusation shall be deemed to be true, correct and admitted by respondent when the board
12 determines whether to grant or deny the application. Respondent shall satisfy all requirements
13 applicable to that license as of the date the application is submitted to the board, including but not
14 limited to taking and passing the California Pharmacist Licensure Examination prior to the
15 issuance of a new license. Respondent is required to report this surrender as disciplinary action.

16 6. Respondent stipulates that should he apply for any new license from the board on or
17 after the effective date of this decision the investigation and prosecution costs in the amount of
18 \$3,405.00 shall be paid to the board prior to issuance of the new license.

19 7. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation, No. 5132 shall be deemed
22 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
23 other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 5-16-16 *Gordon Allen Nelson R.Ph*
GORDON ALLEN NELSON
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: May 16, 2016

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General

Helene E. Rouse
HELENE E. ROUSE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 5132

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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 5132

11 **GORDON ALLEN NELSON**

FIRST AMENDED ACCUSATION

12 218 Pasteur Place
13 Placentia, CA 92870

14 **Pharmacist License No. RPH 31048**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 **LICENSE HISTORY**

21 2. On or about July 29, 1977, the Board of Pharmacy issued Pharmacist License
22 Number RPH 31048 to Gordon Allen Nelson (Respondent). The Pharmacist License expired on
23 July 31, 2013, has not been renewed, and is delinquent.

24 **JURISDICTION**

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

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1 4. Under Section 4300, the Board may discipline any license, for any reason provided in
2 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

3 5. Section 4300.1 states:

4 The expiration, cancellation, forfeiture, or suspension of a board-issued
5 license by operation of law or by order or decision of the board or a court of law, the
6 placement of a license on a retired status, or the voluntary surrender of a license by a
7 licensee shall not deprive the board of jurisdiction to commence or proceed with any
8 investigation of, or action or disciplinary proceeding against, the licensee or to render
9 a decision suspending or revoking the license.

10 6. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
11 within three years following its expiration may not be renewed, restored, or reinstated and shall
12 be canceled by operation of law at the end of the three-year period. Under Section 4402,
13 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to
14 the expiration of the three-year period.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4022 provides that:

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

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

21 ...

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

24 8. Section 4059 prohibits furnishing of any dangerous drug or dangerous device except
25 upon the prescription of an authorized prescriber.

26 9. Section 4059.5 states in relevant part, as follows:

27 (a) Except as otherwise provided in this chapter, dangerous drugs or
28 dangerous devices may only be ordered by an entity licensed by the board and shall
be delivered to the licensed premises and signed for and received by a pharmacist.
Where a licensee is permitted to operate through a designated representative, the
designated representative shall sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold or delivered
to a person within this state shall be transferred, sold, or delivered to an entity
licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's

agent.

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2 (d) Notwithstanding any other provision of law, a dangerous drug or
3 dangerous device may be ordered by and provided to a manufacturer, physician,
4 dentist, podiatrist, optometrist, veterinarian, naturopathic doctor pursuant to Section
5 3640.7, or laboratory, or a physical therapist acting within the scope of his or her
6 license. A person or entity receiving delivery of a dangerous drug or dangerous
7 device, or a duly authorized representative of the person or entity, shall sign for the
8 receipt of the dangerous drug or dangerous device.

9
10 10. Section 4081 states that:

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

22 (b) The owner, officer, and partner of a pharmacy, wholesaler or . . . shall
23 be jointly responsible, with the pharmacist-in-charge or designated representative-in-
24 charge, for maintaining the records and inventory described in this section.

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

11. Section 4105 subdivisions (a) and (c) sets forth, in relevant part that:

12 (a) All records or other documentation of the acquisition and disposition
13 of dangerous drugs and dangerous devices by any entity licensed by the board shall
14 be retained on the licensed premises in a readily retrievable form.

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22 (c) The records required by this section shall be retained on the licensed
23 premises for a period of three years from the date of making.

24 12. Section 4113, subdivision (c) states as follows: "(c) The pharmacist-in-charge shall be
25 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
26 to the practice of pharmacy."

27 13. Section 4169 sets forth, in relevant part, that:

28 (a) A person or entity may not do any of the following:

1 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices
2 at wholesale with a person or entity that is not licensed with the board as a wholesaler
3 or pharmacy.

4 14. Section 4301 provides, in pertinent part, that the Board shall take action against any
5 holder of a license who is guilty of "unprofessional conduct," defined to include, but not be
6 limited to, any of the following:

7 ...

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

10 ...

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

16 15. Health and Safety Code section 11150 provides, in pertinent part, that no person other
17 than an authorized prescriber shall write or issue a prescription.

18 16. California Code of Regulations, title 16, section 1714, subdivision (d), provides that:

19 Each pharmacist while on duty shall be responsible for the security of the
20 prescription department, including provisions for effective control against theft or
21 diversion of dangerous drugs and devices, and records for such drugs and devices.
22 Possession of a key to the pharmacy where dangerous drugs and controlled
23 substances are stored shall be restricted to a pharmacist.

24 17. California Code of Regulations, title 16, section 1718, provides that:

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

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

COST RECOVERY

18. Section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation of the licensing
act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

19. "Promethazine with Codeine" is a dangerous drug, and a Schedule V controlled

1 substance, as designated by Health & Safety Code section 11058, subdivision (c)(1).

2 Promethazine with codeine is a prescription cough syrup.

3 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

4 20. From on or about November 30, 2004 through February 9, 2009, Respondent was the
5 Pharmacist-In-Charge (PIC) for Save-Rite Pharmacy, formerly known as Plaza Pharmacy (Save-
6 Rite), located at 800 N. Tustin Avenue, Suite H, Santa Ana, CA 92705. Save-Rite was issued
7 Pharmacy Permit No. 46903 on October 26, 2004, which expired on October 1, 2009.

8 21. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
9 Revenue Service conducted an investigation and surveillance at Coast Laboratories Inc. dba
10 Green's Pharmaceuticals (Green's), Wholesaler Permit Number WLS 4481, in Long Beach, and
11 on a female named Lucita Uy. At all times relevant to this matter, Uy was not licensed with the
12 Board, was not a pharmacist, and was not an owner, partner or corporate member of Green's.
13 Furthermore, the Board was not notified by Respondent or anyone else between 2006 and August,
14 2008, that Uy was an owner, partner or corporate member of Save-Rite. According to the
15 Board's records, Steven Boyer, License No. RPH 29367, was the sole corporate owner of Save-
16 Rite.

17 22. On or about August 6, 2008, a federal search warrant was executed at Green's and
18 invoices reflecting Green's sales of large amounts of promethazine with codeine to Save-Rite, as
19 well as two other pharmacies, Blue Rose Pharmacy (Blue Rose) and Dean Health Care Inc. dba
20 Value Plus Pharmacy (Value Plus), were seized by the DEA. The invoices showed sales of
21 approximately 75,719 bottles of promethazine with codeine by Green's to Uy to Blue Rose
22 Pharmacy and Save-Rite Pharmacy, between April 2006 and July 2008.

23 23. On or about November 24, 2008, DEA Investigators determined that Uy had
24 purchased promethazine with codeine from Green's and diverted this controlled substance to
25 Houston, Texas, where it was sold on the street for illegitimate drug use. During an interview by
26 DEA agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000
27 bottles of promethazine with codeine from Green's, using the DEA registrations of Save-Rite and
28 Blue Rose pharmacies, to sell them on the streets of Houston.

1 24. On an unknown date, the Board learned of a grand jury indictment in the United
2 States District Court for the Central District of California in the case entitled *United States of*
3 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
4 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 5 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
6 controlled substance which is used to control upper respiratory conditions and
7 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
8 over a short period of time.
- 9 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
10 “high” similar to that experienced when a person uses heroin.¹
- 11 • Although the wholesale price for a pint of promethazine with codeine ranges from
12 \$6.95 to \$8.95, the “street value” when purchased illegally as a street drug in the
13 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
14 greater Los Angeles area), during the time period relevant to this matter.
- 15 • In order to obtain a DEA registration to be able to purchase promethazine with
16 codeine, Uy acquired Save-Rite, Value Plus and Blue Rose.
- 17 • Uy purchased promethazine with codeine from the following wholesalers: Green’s,
18 Modern Medical Products Inc. and FMC Distributors, and then transported it to
19 Texas via vehicles and by shipping it through a parcel service to Texas.
- 20 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
21 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 22 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
23 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
24 the distribution.

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called “purple drank” (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death. (See:
http://en.wikipedia.org/wiki/Purple_drink).

- 1 • Green's, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
2 promethazine with codeine.

3 25. On or about August 25, 2015, in United States District Court, Central District of
4 California, *United States v. Lucita Uy*, et al., Case No. CR 11-426, defendant Uy pled guilty to
5 and was convicted of counts one through three of the first superseding information, for Causing a
6 Financial Institution to Fail to File a Currency Transaction Report, in violation of 31 U.S.C.
7 sections 5324(a)(1) and (d)(2). On or about February 29, 2016, Uy was sentenced to serve 24
8 months in prison and was prohibited from engaging in any business or pharmacy as a whole or
9 partial owner or employee, without the approval of her Probation Officer, among other terms and
10 conditions.

11 26. Beginning in May 2013, the Board's investigator conducted an investigation at
12 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's
13 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
14 invoices for the sales of promethazine with codeine by Green's to Save-Rite which were seized
15 by the DEA were provided to the Board's investigator.

16 27. The Board's investigation revealed that between approximately March 9, 2007
17 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
18 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
19 April 17, 2006 and July 25, 2008, Green's distributed excessive amounts of approximately 73,069
20 pints of promethazine with codeine to Save-Rite and Blue Rose pharmacies, while the initial
21 orders for the drug consisted of 72 pints in April of 2006. Without decreasing order frequency,
22 Green's distributed as much as 720 pints for a single order in March of 2007, and routinely
23 distributed orders consisting of hundreds of pints only days apart to the same pharmacy.

24 28. Matthews was the Designated Representative-In-Charge (DRIC) of Green's from
25 approximately January 1, 2006 through July 30, 2011. Matthews informed the Board's
26 investigator during an interview that Uy walked into Green's one day and wanted to open an
27 account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
28 promethazine with codeine, because she was the person who had opened the account. According

1 to Matthews, the majority of the time, Uy would pick up the order directly at Green's, but some
2 of her orders were also shipped.

3 29. From approximately on or about June 1, 2006 through August 1, 2008, while
4 Respondent was Save-Rite's PIC, Save-Rite suffered thefts and/or losses of dangerous
5 drugs/controlled substances, including promethazine with codeine.

6 30. From approximately on or about June 1, 2006 through August 1, 2008, while
7 Respondent was Save-Rite's PIC, Respondent and Save-Rite failed to maintain a current
8 inventory of its dangerous drugs, and could not account for large amounts of promethazine with
9 codeine which were purchased from Green's.

10 31. From approximately on or about June 1, 2006 through August 1, 2008, while
11 Respondent was the PIC for Save-Rite, Respondent allowed Uy, a non-pharmacist, to sign for
12 and/or receive delivery of controlled substances/dangerous drugs, including promethazine with
13 codeine, from Green's, a wholesaler, which were purchased using Save-Rite's license and DEA
14 registration.

15 32. On or about May 31, 2013, Respondent was interviewed by the Board's investigator,
16 and told him that Uy was the owner of Save-Rite, and that she was responsible for the employees'
17 paychecks, for picking up the mail, for purchasing front store items such as snacks, and for
18 making business decisions. Respondent also stated that Uy would pick up the bills from the
19 wholesalers to Save-Rite and pay them directly. In emergency situations, Respondent said that he
20 paid for the medications and was reimbursed. According to Respondent, he informed the DEA's
21 investigators that Save-Rite dispensed about one pint of promethazine with codeine per month.
22 Furthermore, Respondent indicated that he did not receive any bills from Green's and does not
23 know who ordered the large amounts of promethazine with codeine from Green's using Save-
24 Rite's pharmacy license. Respondent denied any knowledge of the purchase of large amounts of
25 promethazine with codeine by Save-Rite and stated that he never signed for or received any of
26 these medications.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Effective Control and Security of Dangerous Drugs)**

3 33. Respondent is subject to disciplinary action under Sections 4301, subdivisions (o) and
4 (j), in that, while employed as the PIC of Save-Rite, Respondent violated Section 4113,
5 subdivision (c) and California Code of Regulations, title 16, section 1714, subdivision (d), in that
6 Respondent failed to provide effective control against the loss or diversion of dangerous drugs
7 from Save-Rite, so that large amounts of promethazine with codeine purchased from Green's
8 using Save-Rite's licenses, were safely and properly maintained, secured, distributed and
9 accounted for, as set forth above in Paragraphs 20-32, which allegations are incorporated by
10 reference.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Records of Acquisition and Disposition Open
13 For Inspection and to Keep Current Inventory of Dangerous Drugs)**

14 34. Respondent is subject to disciplinary action pursuant to Sections 4301(j) and 4301(o),
15 for violating Sections 4081, subdivisions (a) and (b) and 4113, subdivision (c), in that, while
16 employed as the PIC of Save-Rite, Respondent failed to keep records of the acquisition and
17 disposition of dangerous drugs open for inspection or keep a current inventory of the stock of
18 dangerous drugs, including promethazine with codeine, so as to maintain complete accountability
19 for all such dangerous drugs, as defined by California Code of Regulations, title 16, section 1718,
20 as set forth above in Paragraphs 20-32, which allegations are incorporated by reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Allowing Non-Pharmacist to Sign for and Receive Dangerous Drugs)**

23 35. Respondent is subject to disciplinary action pursuant to Sections 4301, subdivisions
24 (j) and (o), for violating Sections 4169, subdivision (a)(1), 4113, subdivision (c) and 4059.5 in
25 that, while employed as the PIC of Save-Rite, Respondent allowed Uy, a non-pharmacist who
26 was not licensed with the Board, to sign for, accept, order and/or receive dangerous drugs,
27 including promethazine with codeine, using Save-Rite's licenses, as set forth above in Paragraphs
28 20-32, which allegations are incorporated by reference as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

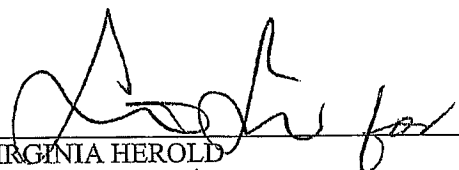
36. Respondent is subject to disciplinary action under Section 4301 for general unprofessional conduct in that he engaged in the activities described in Paragraphs 20-35 above, which are incorporated herein by reference.

PRAAYER

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 31048, issued to Gordon Allen Nelson;
2. Ordering Gordon Allen Nelson 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: May 11, 2016


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

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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against: Case No. 5132
11 **GORDON ALLEN NELSON** **ACCUSATION**
12 218 Pasteur Place
Placentia, CA 92870
13 **Pharmacist License No. RPH 31048**
14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

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

20 **LICENSE HISTORY**

21 2. On or about July 29, 1977, the Board of Pharmacy issued Pharmacist License
22 Number RPH 31048 to Gordon Allen Nelson (Respondent). The Pharmacist License expired on
23 July 31, 2013, has not been renewed, and is delinquent.

24 **JURISDICTION**

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

28 ///

1 4. Under Section 4300, the Board may discipline any license, for any reason provided in
2 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

3 5. Section 4300.1 states:

4 The expiration, cancellation, forfeiture, or suspension of a board-issued
5 license by operation of law or by order or decision of the board or a court of law, the
6 placement of a license on a retired status, or the voluntary surrender of a license by a
7 licensee shall not deprive the board of jurisdiction to commence or proceed with any
8 investigation of, or action or disciplinary proceeding against, the licensee or to render
9 a decision suspending or revoking the license.

10 6. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
11 within three years following its expiration may not be renewed, restored, or reinstated and shall
12 be canceled by operation of law at the end of the three-year period. Under Section 4402,
13 subdivision (d), the Board has authority to proceed with an accusation that has been filed prior to
14 the expiration of the three-year period.

15 **STATUTORY AND REGULATORY PROVISIONS**

16 7. Section 4022 provides that:

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

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

21 ...

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

24 8. Section 4059 prohibits furnishing of any dangerous drug or dangerous device except
25 upon the prescription of an authorized prescriber.

26 9. Section 4081 states that:

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

1 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
2 drugs or dangerous devices.

3 (b) The owner, officer, and partner of a pharmacy, wholesaler or . . . shall
4 be jointly responsible, with the pharmacist-in-charge or designated representative-in-
5 charge, for maintaining the records and inventory described in this section.

6 (c) The pharmacist-in-charge or designated representative-in-charge shall
7 not be criminally responsible for acts of the owner, officer, partner, or employee that
8 violate this section and of which the pharmacist-in-charge or designated
9 representative-in-charge had no knowledge, or in which he or she did not knowingly
10 participate.

11 10. Section 4105 subdivisions (a) and (c) sets forth, in relevant part that:

12 (a) All records or other documentation of the acquisition and disposition
13 of dangerous drugs and dangerous devices by any entity licensed by the board shall
14 be retained on the licensed premises in a readily retrievable form.

15

16 (c) The records required by this section shall be retained on the licensed
17 premises for a period of three years from the date of making.

18 11. Section 4113, subdivision (c) states as follows: "(c) The pharmacist-in-charge shall be
19 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
20 to the practice of pharmacy."

21 12. Section 4169 sets forth, in relevant part, that:

22 (a) A person or entity may not do any of the following:

23 (1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices
24 at wholesale with a person or entity that is not licensed with the board as a wholesaler
25 or pharmacy.

26 13. Section 4301 provides, in pertinent part, that the Board shall take action against any
27 holder of a license who is guilty of "unprofessional conduct," defined to include, but not be
28 limited to, any of the following:

...

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

...

(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.

1 14. Health and Safety Code section 11150 provides, in pertinent part, that no person other
2 than an authorized prescriber shall write or issue a prescription.

3 15. California Code of Regulations, title 16, section 1714, subdivision (d), provides that:

4 Each pharmacist while on duty shall be responsible for the security of the
5 prescription department, including provisions for effective control against theft or
6 diversion of dangerous drugs and devices, and records for such drugs and devices.
7 Possession of a key to the pharmacy where dangerous drugs and controlled
8 substances are stored shall be restricted to a pharmacist.

9 16. California Code of Regulations, title 16, section 1718, provides that:

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

13 The controlled substances inventories required by Title 21, CFR, Section
14 1304 shall be available for inspection upon request for at least 3 years after the date of
15 the inventory.

16 COST RECOVERY

17 17. Section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation of the licensing
19 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

20 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

21 18. "Promethazine with Codeine" is a dangerous drug, and a Schedule V controlled
22 substance, as designated by Health & Safety Code section 11058, subdivision (c)(1).
23 Promethazine with codeine is a prescription cough syrup.

24 FACTS SUPPORTING CAUSES FOR DISCIPLINE

25 19. From on or about November 30, 2004 through February 9, 2009, Respondent was the
26 Pharmacist-In-Charge (PIC) for Save-Rite Pharmacy, formerly known as Plaza Pharmacy (Save-
27 Rite), located at 800 N. Tustin Avenue, Suite H, Santa Ana, CA 92705. Save-Rite was issued
28 Pharmacy Permit No. 46903 on October 26, 2004, which expired on October 1, 2009.

29 20. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
30 Revenue Service conducted an investigation and surveillance at Coast Laboratories Inc. dba
31 Green's Pharmaceuticals (Green's), Wholesaler Permit Number WLS 4481, in Long Beach, and
32 on a female named Lucita Uy. At all times relevant to this matter, Uy was not licensed with the

1 Board, was not a pharmacist, and was not an owner, partner or corporate member of Green's.
2 Furthermore, the Board was not notified by Respondent or anyone else between 2006 and August,
3 2008, that Uy was an owner, partner or corporate member of Save-Rite. According to the
4 Board's records, Steven Boyer, License No. RPH 29367, was the sole corporate owner of Save-
5 Rite.

6 21. On or about August 6, 2008, a federal search warrant was executed at Green's and
7 invoices reflecting Green's sales of large amounts of promethazine with codeine to Save-Rite, as
8 well as two other pharmacies, Blue Rose Pharmacy (Blue Rose) and Dean Health Care Inc. dba
9 Value Plus Pharmacy (Value Plus), were seized by the DEA. The invoices showed sales of
10 approximately 75,719 bottles of promethazine with codeine by Green's to Uy to Blue Rose
11 Pharmacy and Save-Rite Pharmacy, between April 2006 and July 2008.

12 22. On or about November 24, 2008, DEA Investigators determined that Uy had
13 purchased promethazine with codeine from Green's and diverted this controlled substance to
14 Houston, Texas, where it was sold on the street for illegitimate drug use. During an interview by
15 DEA agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000
16 bottles of promethazine with codeine from Green's, using the DEA registrations of Save-Rite and
17 Blue Rose pharmacies, to sell them on the streets of Houston.

18 23. On an unknown date, the Board learned of a grand jury indictment in the United
19 States District Court for the Central District of California in the case entitled *United States of*
20 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
21 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 22 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
23 controlled substance which is used to control upper respiratory conditions and
24 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
25 over a short period of time.

- 1 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
- 2 "high" similar to that experienced when a person uses heroin.¹
- 3 • Although the wholesale price for a pint of promethazine with codeine ranges from
- 4 \$6.95 to \$8.95, the "street value" when purchased illegally as a street drug in the
- 5 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
- 6 greater Los Angeles area), during the time period relevant to this matter.
- 7 • In order to obtain a DEA registration to be able to purchase promethazine with
- 8 codeine, Uy acquired Save-Rite, Value Plus and Blue Rose.
- 9 • Uy purchased promethazine with codeine from the following wholesalers: Green's,
- 10 Modern Medical Products Inc. and FMC Distributors, and then transported it to
- 11 Texas via vehicles and by shipping it through a parcel service to Texas.
- 12 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
- 13 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 14 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
- 15 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
- 16 the distribution.
- 17 • Green's, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
- 18 promethazine with codeine.

19 24. U.S.D.C., Central District of California Case No. CR 11 00426 is still pending
20 against Uy, who has been charged with conspiracy to launder money; conspiracy to structure
21 financial transactions; and two counts of criminal forfeiture. Defendant Crawford pled guilty to
22 money laundering and admitted he was part of a criminal conspiracy from an unknown date until
23 August 22, 2008, to engage in financial transactions from proceeds of felonious drug trafficking.
24 The factual basis for Crawford's plea agreement states as follows: The object of the conspiracy

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called "purple drank" (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death. (See:
http://en.wikipedia.org/wiki/Purple_drink).

1 was to unlawfully distribute promethazine with codeine and conceal the proceeds from the sale.
2 Uy owned and operated several pharmacies in the Los Angeles area (including but not limited to
3 Save-Rite) and used their licenses to purchase large quantities of promethazine with codeine. Uy
4 hired drivers to ship approximately 720 bottles (one pint per bottle) per shipment to Texas and
5 received between \$50 and \$100 per bottle.

6 25. Beginning in May 2013, the Board's investigator conducted an investigation at
7 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's
8 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
9 invoices for the sales of promethazine with codeine by Green's to Save-Rite which were seized
10 by the DEA were provided to the Board's investigator.

11 26. The Board's investigation revealed that between approximately March 9, 2007
12 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
13 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
14 April 17, 2006 and July 25, 2008, Green's distributed excessive amounts of approximately 73,069
15 pints of promethazine with codeine to Save-Rite and Blue Rose pharmacies, while the initial
16 orders for the drug consisted of 72 pints in April of 2006. Without decreasing order frequency,
17 Green's distributed as much as 720 pints for a single order in March of 2007, and routinely
18 distributed orders consisting of hundreds of pints only days apart to the same pharmacy.

19 27. Matthews was the Designated Representative-In-Charge (DRIC) of Green's from
20 approximately January 1, 2006 through July 30, 2011. Matthews informed the Board's
21 investigator during an interview that Uy walked into Green's one day and wanted to open an
22 account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
23 promethazine with codeine, because she was the person who had opened the account. According
24 to Matthews, the majority of the time, Uy would pick up the order directly at Green's, but some
25 of her orders were also shipped.

26 28. From approximately on or about June 1, 2006 through August 1, 2008, while
27 Respondent was Save-Rite's PIC, Save-Rite suffered thefts and/or losses of dangerous
28 drugs/controlled substances, including promethazine with codeine.

1 29. From approximately on or about June 1, 2006 through August 1, 2008, while
2 Respondent was Save-Rite's PIC, Respondent and Save-Rite failed to maintain a current
3 inventory of its dangerous drugs, and could not account for large amounts of promethazine with
4 codeine which were purchased from Green's.

5 30. From approximately on or about June 1, 2006 through August 1, 2008, while
6 Respondent was the PIC for Save-Rite, Respondent allowed Uy, a non-pharmacist, to sign for
7 and/or receive delivery of controlled substances/dangerous drugs, including promethazine with
8 codeine, from Green's, a wholesaler, which were purchased using Save-Rite's license and DEA
9 registration.

10 31. On or about May 31, 2013, Respondent was interviewed by the Board's investigator,
11 and told him that Uy was the owner of Save-Rite, and that she was responsible for the employees'
12 paychecks, for picking up the mail, for purchasing front store items such as snacks, and for
13 making business decisions. Respondent also stated that Uy would pick up the bills from the
14 wholesalers to Save-Rite and pay them directly. In emergency situations, Respondent said that he
15 paid for the medications and was reimbursed. According to Respondent, he informed the DEA's
16 investigators that Save-Rite dispensed about one pint of promethazine with codeine per month.
17 Furthermore, Respondent indicated that he did not receive any bills from Green's and does not
18 know who ordered the large amounts of promethazine with codeine from Green's using Save-
19 Rite's pharmacy license. Respondent denied any knowledge of the purchase of large amounts of
20 promethazine with codeine by Save-Rite and stated that he never signed for or received any of
21 these medications.

22 FIRST CAUSE FOR DISCIPLINE

23 **(Failure to Provide Effective Control and Security of Dangerous Drugs)**

24 32. Respondent is subject to disciplinary action under Sections 4301, subdivisions (o) and
25 (j), in that, while employed as the PIC of Save-Rite, Respondent violated Section 4113,
26 subdivision (c) and California Code of Regulations, title 16, section 1714, subdivision (d), in that
27 Respondent failed to provide effective control against the loss or diversion of dangerous drugs
28 from Save-Rite, so that large amounts of promethazine with codeine purchased from Green's

1 using Save-Rite's licenses, were safely and properly maintained, secured, distributed and
2 accounted for, as set forth above in Paragraphs 19-31, which allegations are incorporated by
3 reference.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Records of Acquisition and Disposition Open
6 For Inspection and to Keep Current Inventory of Dangerous Drugs)**

7 33. Respondent is subject to disciplinary action pursuant to Sections 4301(j) and 4301(o),
8 for violating Sections 4081, subdivisions (a) and (b) and 4113, subdivision (c), in that, while
9 employed as the PIC of Save-Rite, Respondent failed to keep records of the acquisition and
10 disposition of dangerous drugs open for inspection or keep a current inventory of the stock of
11 dangerous drugs, including promethazine with codeine, so as to maintain complete accountability
12 for all such dangerous drugs, as defined by California Code of Regulations, title 16, section 1718,
13 as set forth above in Paragraphs 19-31, which allegations are incorporated by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Allowing Non-Pharmacist to Sign for and Receive Dangerous Drugs)**

16 34. Respondent is subject to disciplinary action pursuant to Sections 4301, subdivisions
17 (j) and (o), for violating Sections 4113, subdivision (c) and 4059.5 in that, while employed as the
18 PIC of Save-Rite, Respondent allowed Uy, a non-pharmacist who was not licensed with the
19 Board, to sign for, accept, order and/or receive dangerous drugs, including promethazine with
20 codeine, using Save-Rite's licenses, as set forth above in Paragraphs 19-31, which allegations are
21 incorporated by reference as though set forth fully.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(General Unprofessional Conduct)**

24 35. Respondent is subject to disciplinary action under Section 4301 for general
25 unprofessional conduct in that he engaged in the activities described in Paragraphs 19-34 above,
26 which are incorporated herein by reference.

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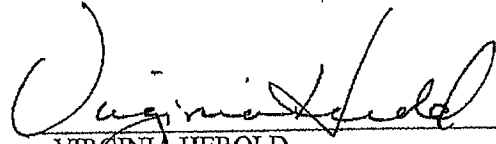
PRAYER

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 31048, issued to Gordon Allen Nelson;
2. Ordering Gordon Allen Nelson 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: _____

11/27/15



VIRGINIA HEROLD
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