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8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 3199

14 **ROBERT MICHAEL LOPEZ**
263 Murano Street
Los Baños, CA 93635

ACCUSATION

15 Original Pharmacist License No. RPH 37861.

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 31, 1983, the Board of Pharmacy issued Original
23 Pharmacist License Number RPH 37861 to Robert Michael Lopez (Respondent). The Original
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on January 31, 2009, unless renewed.

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JURISDICTION

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

5 4. Section 101.1(b) of the Code states:

6 "(1) In the event that any board, as defined in Section 477, becomes inoperative or
7 is repealed in accordance with the act that added this section, or by subsequent acts, the Department
8 of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes,
9 responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its
10 executive officer."

11 5. Section 118 of the Code states:

12 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued
13 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
14 by order of a court of law, or its surrender without the written consent of the board, shall not, during
15 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
16 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
17 provided by law or to enter an order suspending or revoking the license or otherwise taking
18 disciplinary action against the licensee on any such ground.

19 "(c) As used in this section, 'board' includes an individual who is authorized by any
20 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
21 'registration,' and 'permit.'"

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

26 7. Section 150 of the Code states: "The department is under the control of a civil
27 executive officer who is known as the Director of Consumer Affairs."

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8. Section 22 of the Code states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency'."

9. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

10. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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11. Section 4301 provides in relevant part:

"The board shall take action against nay holder of a license who is guilty of unprofessional conduct..... Unprofessional conduct shall include, but is not limited to, any of the following:

- (a) Gross immorality.
- (b) Incompetence.
- (c) Gross negligence.
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision.
- (o) Violating or attempting to violate, directly or indirectlyany provision or term of this chapter or of the applicable federal and state laws and regulations governing the pharmacy, including regulations established by the board.
- (p) Actions or conduct that would have warranted denial of a license."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

11. Respondent is subject to disciplinary action under section 4301 for committing acts of gross immorality. Respondent while pharmacist-in-charge diverted, embezzled or otherwise misappropriated money belonging to Memorial Hospital Los Banos.

12. On or about October 2003 through June 2007, while pharmacist-in-charge at Memorial Hospital Los Banos Pharmacy (hereinafter Hospital Pharmacy), Respondent misappropriated hospital funds by diverting checks intended for the hospital to his personal bank

1 account for personal use. The Respondent diverted the money by endorsing checks payable to and
2 intended for the Hospital and then depositing the checks in his personal account. Total amount
3 diverted was approximately \$289,000.00.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct)

6 13. Respondent is subject to disciplinary action under section 4301(f) in that the
7 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption.

8 14. Between approximately October 2003 to June 2007, while the pharmacist-in-
9 charge at the Hospital Pharmacy, the Respondent misappropriated money by depositing checks
10 intended for the Hospital into Respondent's personal account for use by the Respondent.
11 Respondent accomplished the diversion by endorsing the checks payable to the Hospital with his
12 name and thereafter depositing the checks in Respondent's personal account. At the time of these
13 acts, Respondent was the pharmacist-in-charge of the Hospital Pharmacy and held a fiduciary
14 position and obligation to handle the funds of Memorial Hospital for the use and benefit of the
15 Hospital but diverted the funds for his personal use.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 15. Respondent is subject to disciplinary action under section 4301(j) and (o) for
19 violating Code of Federal Regulations, Title 21 Section 1305.09 as mandated by section 4113 (b).
20 Respondent in his capacity as pharmacist-in-charge of the Hospital Pharmacy from approximately
21 October 2005 to October 2007 failed to maintain or cause to be maintained records of purchase and
22 inventory of dangerous drugs and schedule II drugs.

23 16. Respondent's duties in his position as the pharmacist-in-charge for the
24 Hospital Pharmacy included the duty that all laws were followed by the Hospital Pharmacy including
25 but not limited to federal statutes and regulations pertaining to purchase, storage and sale of
26 dangerous drugs and schedule II drugs as those terms are defined in the statutes and regulations. In
27 particular the pharmacist-in-charge must timely and fully complete Drug Enforcement
28 Administration Form 222 delineating the dates of purchase, inventory and other relevant information

1 pertaining to dangerous drugs and Schedule II drugs. Respondent in the 2 years preceding October
2 11, 2007 failed or omitted on numerous occasions to properly complete DEA 222 forms in violation
3 of federal and state law.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct)

6 17. Respondent is subject to disciplinary action under section 4301(j) and (o) for
7 violating Section 4113(b) and Health and Safety Code section 11165(d). In his capacity as
8 pharmacist- in-charge at the Hospital Pharmacy, Respondent was responsible to insure the pharmacy
9 complied with all federal and state statutes governing pharmacies.

10 18. From approximately January 2004 through and including October 2007 the
11 pharmacy was required pursuant to section 4113(b) and Health and Safety Code section 11165(d)
12 to provide data and information to the California Department of Justice for every Schedule II to IV
13 controlled substances dispensed from the pharmacy for the electronic monitoring of prescription and
14 dispensing of the controlled substances. Respondent failed during this time to supply the required
15 information in violation of the reporting statutes.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 19. Respondent is subject to disciplinary action under section 4301(j) and (o) for
19 violating sections 4076, 4077 and 4113(b). From approximately January 19, 1996 through July 26,
20 2007 Respondent was the pharmacist-in-charge of the Hospital Pharmacy and responsible for the
21 pharmacy's compliance with and obedience of all laws.

22 20. During the time Respondent was pharmacist-in-charge, Respondent filled and
23 dispensed prescriptions without the physical description of the dispensed medication on the
24 prescription label or on an auxiliary label affixed to the prescription container. Respondent on
25 numerous occasions omitted the physical description of dispensed medication on the prescription
26 label and/or auxiliary label prior to filling all in violation of sections 4076, 4077 and 4113(b).

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 21. Respondent is subject to disciplinary action under section 4301(j) and (o) for
4 violations of sections 4105 and 4081. Respondent violated these sections by failing to maintain
5 records of the disposition of dangerous drugs.

6 22. While working as pharmacist-in-charge at the Hospital Pharmacy, Respondent
7 furnished a dangerous drug, Diovan, on two occasions to himself without appropriate prescription
8 record keeping requirements. Diovan is a dangerous drug within the meaning of Section 4022.

9 **PRAYER**

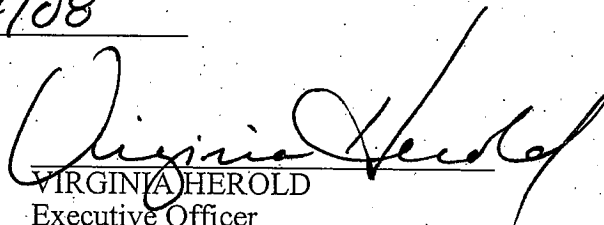
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Original Pharmacist License Number RPH 37861,
13 issued to Robert Michael Lopez .

14 2. Ordering Respondent Robert Michael Lopez to pay the Board of Pharmacy
15 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and

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

18 DATED: 10/14/08

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20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

24 BST 8/6/08
25 Accusation
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