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

12 In the Matter of the Accusation Against:
13 KEN ENG,
a.k.a. SIU KEUNG NG
14 17725 Silverstream Drive
Canyon Country, CA 91351.
15 Pharmacist License No. RPH 35351
16 Respondent.
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Case No. 3222.

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 13, 1980, the Board issued Pharmacist License Number
24 RPH 35351 to Ken Eng, also known as Siu Keung Ng ("Respondent"). Respondent's pharmacist
25 license was in full force and effect at all times relevant to the charges brought herein and will
26 expire on June 30, 2010, unless renewed.

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STATUTORY PROVISIONS

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3. Business and Professions Code ("Bus. & Prof. Code") section 4300 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 . . .

4. Bus. & Prof. 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:

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- (c) Gross negligence.
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- (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.
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- (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.
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- (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 . . .

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5. Bus. & Prof. Code section 4022 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. Bus. & Prof. Code section 4060 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 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer . . .

7. Bus. & Prof. Code section 4327 states that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

8. Health and Safety Code ("Health & Saf. Code") section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

9. Health & Saf. Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

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1 COST RECOVERY

2 10. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board
3 may request the administrative law judge to direct a licentiate found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS AT ISSUE

7 11. "Vicodin", a combination drug containing hydrocodone and
8 acetaminophen, is a Schedule III controlled substance as designated by Health & Saf. Code
9 section 11056, subdivision (c)(4). Vicodin is also a dangerous drug within the meaning of Bus.
10 & Prof. Code section 4022 in that it is available by prescription only.

11 12. "Fioricet," a brand of butalbital, is a dangerous drug within the meaning of
12 Business and Professions Code section 4022 in that it requires a prescription under federal law.
13 Each tablet contains 50 mg butalbital, 325 mg acetaminophen, and 40 mg caffeine.

14 STATEMENT OF FACTS

15 13. On or about January 28, 2007, while employed and on duty as a
16 pharmacist at Von's Pharmacy located in Granada Hills, California, Respondent was observed by
17 a store supervisor to be under the influence of an unknown substance. The paramedics were
18 called and Respondent was transported by ambulance to the emergency room at Holy Cross
19 Hospital, Mission Hills. Respondent underwent a urine drug screen and tested positive for
20 opiates and barbiturates.

21 14. On May 20, 2008, the Board's inspector, Roger Toevs ("Toevs"), RPII,
22 interviewed Respondent. Respondent stated that he had ingested Vicodin and Fioricet, that he
23 had obtained the Vicodin and Fioricet from a friend, and that he did not have prescriptions for the
24 medications. That same day, Respondent provided Toevs with a declaration, stating that he had
25 "borrowed" a few Vicodin and Fioricet tablets from a friend's medicine chest to treat a chronic
26 toothache, and that he had blacked out at the pharmacy after taking the medications.

27 15. On July 17, 2008, Toevs obtained documentation from Von's Pharmacy
28 indicating that Respondent had filled 19 new prescriptions and 30 refills on January 28, 2008.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 16. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
4 section 4301, subdivision (c), on the grounds of unprofessional conduct, in that on or about
5 January 28, 2007, while on duty as a pharmacist at Von's Pharmacy located in Granada Hills,
6 California, Respondent committed acts of gross negligence, as follows: Respondent dispensed or
7 compounded drugs while under the influence of the controlled substance Vicodin and dangerous
8 drug Fioricet, and used the medications to an extent or in a manner dangerous or injurious to
9 himself and others, or to the extent that such use impaired his ability to conduct his pharmacist
10 duties safely, as set forth in paragraphs 13 through 15 above.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Self-Administration of Controlled Substances)**

13 17. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
14 section 4301, subdivision (h), on the grounds of unprofessional conduct, in that on or about
15 January 28, 2007, while on duty as a pharmacist at Von's Pharmacy located in Granada Hills,
16 California, Respondent self-administered an unknown quantity of the controlled substance
17 Vicodin, and used Vicodin and the dangerous drug Fioricet to an extent or in a manner dangerous
18 or injurious to himself and others, or to the extent that such use impaired his ability to conduct
19 his pharmacist duties safely, as set forth in paragraphs 13 through 15 above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Violations of State Statutes Regulating Controlled Substances)**

22 18. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
23 section 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about
24 January 28, 2007, while on duty as a pharmacist at Von's Pharmacy located in Granada Hills,
25 California, Respondent violated the following state statutes regulating controlled substances:

26 a. Respondent possessed an unknown quantity of the controlled substance
27 Vicodin without a lawful prescription for the medication from a physician, dentist, podiatrist,

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1 optometrist, or veterinarian, in violation of Bus. & Prof. Code section 4060 and Health & Saf.
2 Code section 11350, subdivision (a).

3 b. Respondent prescribed, administered, or furnished an unknown quantity of
4 the controlled substance Vicodin to himself, as set forth in paragraphs 13 through 15 above, in
5 violation of Health & Saf. Code section 11170.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of State Laws and Regulations Governing Pharmacy)**

8 19. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
9 section 4301, subdivision (o), on the grounds of unprofessional conduct, in that on or about
10 January 28, 2007, while on duty as a pharmacist at Von's Pharmacy located in Granada Hills,
11 California, Respondent violated or attempted to violate, directly or indirectly, or assisted in or
12 abetted the violation of, or conspired to violate, the following state law governing pharmacy: On
13 the date indicated above, Respondent dispensed or compounded drugs while under the influence
14 of the controlled substance Vicodin and dangerous drug Fioricet, in violation of Bus. & Prof.
15 Code section 4327.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacist License Number RPH 35351, issued
20 to Ken Eng, also known as Siu Keung Ng;

21 2. Ordering Ken Eng, also known as Siu Keung Ng, to pay the Board of
22 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3;

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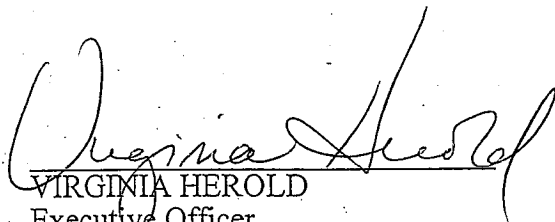
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3. Taking such other and further action as deemed necessary and proper.

DATED: 6/23/09



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

Complainant