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

11 In the Matter of the Accusation Against:

Case No. 3330

12 **EMERSON PHARMACY INC., dba**
13 **EMERSON PHARMACY, NIMA**
14 **RODEFSHALOM, President, Pharmacist-**
15 **In-Charge, MEHRAN KOHAN-BASH,**
16 **Secretary, JOSEPH KOHAN, Treasurer,**
17 **Chief Financial Officer**
18 **1529 Rexford Drive**
19 **Los Angeles, CA 90035**
20 **Original Pharmacy Permit No. PHY48754,**

A C C U S A T I O N

17 **and**

18 **NIMA RODEFSHALOM**
19 **1529 Rexford Dr.**
20 **Los Angeles, CA 90035**
21 **Original Pharmacist License No. RPH 55990**

21 Respondents.

23 Complainant alleges:

24 PARTIES

- 25 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
26 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
27 2. On or about November 14, 2007, the Board of Pharmacy (Board) issued Original
28 Pharmacy Permit Number PHY48754 to Emerson Pharmacy Inc., to do business as Emerson

1 Pharmacy, with Nima Rodefshalom as President and Pharmacist-In-Charge, Mehran Kohan-Bash
2 as Secretary, and Joseph Kohan as Treasurer/Chief Financial Officer (Respondent Emerson). The
3 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
4 and will expire on November 1, 2009, unless renewed.

5 3. On or about August 6, 2004, the Board issued Original Pharmacist License Number
6 RPH 55990 to Nima Rodefshalom (Respondent Rodefshalom). The Pharmacist License was in
7 full force and effect at all times relevant to the charges brought herein and will expire on
8 December 31, 2009, unless renewed.

9 JURISDICTION

10 4. This Accusation is brought before the Board under the authority of the following
11 laws. All section references are to the Business and Professions Code unless otherwise indicated.

12 STATUTORY PROVISIONS

13 5. Section 4300, subdivision (a), states: "Every license issued may be suspended or
14 revoked."

15 6. Section 4301 states, in pertinent part:

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

19

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

22

23 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
24 violation of or conspiring to violate any provision or term of this chapter or of the applicable
25 federal and state laws and regulations governing pharmacy, including regulations established by
26 the board or by any other state or federal regulatory agency."

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1 7. Section 4302 states:

2 “The board may deny, suspend, or revoke any license of a corporation where conditions
3 exist in relation to any person holding 10 percent or more of the corporate stock of the
4 corporation, or where conditions exist in relation to any officer or director of the corporation that
5 would constitute grounds for disciplinary action against a licensee.”

6 8. Section 4113 states:

7 “(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof,
8 shall notify the board in writing of the identity and license number of the pharmacist and the date
9 he or she was designated.

10 “(b) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all
11 state and federal laws and regulations pertaining to the practice of pharmacy.”

12 9. Section 4081 states, in pertinent part:

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

22 “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal
23 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
24 charge, for maintaining the records and inventory described in this section.”

25 10. Section 4332 states:

26 “Any person who fails, neglects, or refuses to maintain the records required by Section
27 4081 or who, when called upon by an authorized officer or a member of the board fails, neglects,

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1 or refuses to produce or provide the records within a reasonable time, or who willfully produces
2 or furnishes records that are false, is guilty of a misdemeanor.”

3 REGULATORY PROVISIONS

4 11. California Code of Regulations, title 16, section 1714, subdivision (b), states:

5 “Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
6 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
7 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
8 of pharmacy.”

9 12. California Code of Regulations, title 16, section 1718, states:

10 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
11 Code shall be considered to include complete accountability for all dangerous drugs handled by
12 every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories
13 required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least
14 3 years after the date of the inventory.”

15 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

16 13. Hydrocodone/APAP (generic for Vicodin ES) is a Schedule III controlled substance
17 as designated by Health and Safety Code section 11056, subdivisions (a) and (e), and is a
18 dangerous drug as defined in section 4022.

19 14. Valium (brand name for Diazepam) is a Schedule IV controlled substance as
20 designated by Health and Safety Code section 11057, subdivisions (a) and (d)(9), and is a
21 dangerous drug as defined in section 4022.

22 15. Alprazolam (generic for Xanax) is a Schedule IV controlled substance as designated
23 by Health and Safety Code section 11057, subdivisions (a) and (d)(1), and is a dangerous drug as
24 defined in section 4022.

25 16. Section 4022 states, in pertinent part:

26 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
27 humans or animals, and includes the following:

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

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

6 COST RECOVERY PROVISION

7 17. Section 125.3 provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 FIRST CAUSE FOR DISCIPLINE

12 (Failure to Maintain and Secure Drugs)

13 18. Respondent Emerson and Respondent Rodefshalom are subject to disciplinary action
14 under section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16,
15 section 1714, subdivision (b), for unprofessional conduct and failure to maintain the pharmacy so
16 that dangerous drugs were safely and properly secured. The circumstances are as follows:

17 a. On or about May 28, 2008, Respondent Rodefshalom was the Pharmacist-in-Charge
18 at Respondent Emerson when Pharmacy Technician Reina Chavez stole from Respondent
19 Emerson two bottles (1000 tablets) of Hydrocodone/APAP 7.5 (generic for Vicodin ES), and one
20 bottle (100 tablets) of Valium 10 mg. On or about May 29, 2008, Respondent Rodefshalom
21 contacted the police about this incident and the police arrested Reina Chavez.

22 b. On or about June 19, 2008, after pleading nolo contendere, Reina Chavez was
23 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand
24 theft of property over \$400 in value], in the criminal proceeding entitled *The People of the State*
25 *of California v. Reina Chavez* (Super Ct. Los Angeles County, 2008, Case No. SA068043). The
26 conviction resulted from Ms. Chavez’s May 29, 2009 arrest for the conduct described above in
27 paragraph 18.a.

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1 c. After the May 28, 2008 theft, Respondent Emerson and Respondent Rodefshalom
2 conducted an audit of controlled substances purchased, dispensed and on hand in the pharmacy as
3 current inventory, during the period November 19, 2007 to May 29, 2008, and determined that
4 they could not account for 35,065 tablets of Hydrocodone/APAP, 14,119 tablets of Alprazolam 2
5 mg., 2,804 tablets of Valium 10 mg., and 916 tablets of Valium 5 mg.

6 SECOND CAUSE FOR DISCIPLINE

7 (Failure to Maintain Complete Records)

8 19. Respondent Emerson and Respondent Rodefshalom are subject to disciplinary action
9 under sections 4301, subdivisions (j) and (o), 4081 and 4332, in conjunction with California Code
10 of Regulations, title 16, section 1718, for failure to maintain complete and accurate records of
11 dangerous drugs purchased, dispensed and on hand in the pharmacy as current inventory.
12 Complainant refers to and incorporates all the allegations set forth in paragraphs 18.a through
13 18.c, inclusive, as though set forth fully.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board issue a decision:

17 1. Revoking or suspending Pharmacy Permit Number PHY48754, issued to Emerson
18 Pharmacy Inc., to do business as Emerson Pharmacy, with Nima Rodefshalom as President and
19 Pharmacist-In-Charge, Mehran Kohan-Bash as Secretary, and Joseph Kohan as Treasurer/Chief
20 Financial Officer.

21 2. Revoking or suspending Original Pharmacist License Number RPH 55990, issued to
22 Respondent Rodefshalom.

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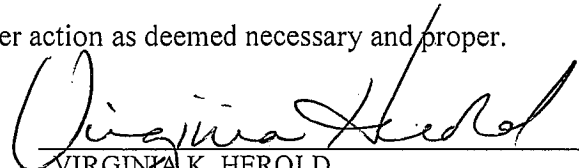
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3. Ordering Respondent Emerson Pharmacy and Respondent Rodefshalom to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/2/09



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

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