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

12 In the Matter of the Accusation Against:

Case No. 3374

13 KRIS CARIN MURAOKA  
14 24092 Ironhead Lane  
Laguna Niguel, CA 92677

**A C C U S A T I O N**

15 Pharmacist License No. RPH 38703

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 15, 1984, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 38703 to Kris Carin Muraoka (Respondent). The Pharmacist License was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
25 2010, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be  
6 suspended or revoked."

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
8 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
9 disciplinary action during the period within which the license may be renewed, restored, reissued  
10 or reinstated.

11 **STATUTORY PROVISIONS**

12 6. Section 4301 of the Code states:

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

17 .....

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

21 .....

22 (h) The administering to oneself, of any controlled substance, or the use of any  
23 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
24 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
25 to any other person or to the public, or to the extent that the use impairs the ability of  
26 the person to conduct with safety to the public the practice authorized by the license.

27 .....

28 (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, 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.

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7. 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.

8. 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, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

9. Section 4060 of the Code states:

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, or a physician assistant pursuant to Section 3502.1, or 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.

10. Health and Safety Code section 11170 provides:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

11. Health and Safety Code section 11173, subdivision (a) provides:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

1 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1769 states:

3 . . . .

4 (b) When considering the suspension or revocation of a facility or a personal  
5 license on the ground that the licensee or the registrant has been convicted of a crime,  
6 the board, in evaluating the rehabilitation of such person and his present eligibility for  
7 a license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,  
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 13. California Code of Regulations, title 16, section 1770 states:

15 For the purpose of denial, suspension, or revocation of a personal or facility  
16 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
17 Professions Code, a crime or act shall be considered substantially related to the  
18 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
19 it evidences present or potential unfitness of a licensee or registrant to perform the  
20 functions authorized by his license or registration in a manner consistent with the  
21 public health, safety, or welfare.

22 **COST RECOVERY**

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

27 **DRUG**

28 15. Fiorinal, a brand name for generic butalbital, acetaminophen, and caffeine, is a  
Schedule III controlled substance as designated by Health and Safety Code section 11057,  
subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section  
4022.

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1 Business and Professions Code sections 4022 and 4059 regulating controlled substances and  
2 dangerous drugs, as detailed in paragraphs 15-21, above. Such conduct is substantially related to  
3 the qualifications, duties, and functions of a pharmacist.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Violating Laws  
6 & Regulations Governing Pharmacy)**

7 26. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
8 Code in that on or about October 9 and October 15, 2008, Respondent's diversion of controlled  
9 substances violated Health and Safety Code section 11173, subdivision (a), Board of Pharmacy  
10 Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California  
11 Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in  
12 paragraphs 15-21, above.

13 **PRAYER**

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

16 1. Revoking or suspending Pharmacist License Number RPH 38703, issued to Kris  
17 Carin Muraoka;

18 2. Ordering Kris Carin Muraoka to pay the Board of Pharmacy the reasonable costs of  
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
20 125.3;

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

22 DATED: 9/24/09

23 Virginia Herold  
24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

SD2009804247