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

11 In the Matter of the Accusation Against:

Case No. 3430

12 **JOHN MICHAEL PUCCINELLI**  
22477 Santa Paula Ave.  
13 Cupertino, CA 95014  
14 **Pharmacist License No. RPH 26552**

**ACCUSATION**

15 **and**

16 **SAVCO GENERIC DRUGS**  
2101 Forest Avenue, No. 122  
17 San Jose, CA 95128  
18 **Pharmacy Permit No. PHY 32506**

Respondents.

19  
20 Complainant alleges:

21 PARTIES

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

24 2. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist License  
25 Number RPH 26552 to John Michael Puccinelli (Respondent Puccinelli). The Pharmacist  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on March 31, 2011, unless renewed.  
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1           3.     On or about December 3, 1985, the Board of Pharmacy issued Pharmacy Permit No.  
2     PHY 32506 to Savco Generic Drugs (Respondent Savco), with James W. Junker, RPH 24929 as  
3     President of the company, Lloyd Ando as Vice President, and Ron Sakamoto as Secretary. The  
4     Savco Pharmacy Permit was in full force and effect at all times relevant to the charges brought  
5     herein and will expire on December 1, 2009, unless renewed.

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7   JURISDICTION

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

11           5.     Section 4300(a) of the Code provides that every license issued by the Board may be  
12    suspended or revoked.

13           6.     Section 4301 of the Code states:

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

17   ...

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

21   ...

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

24   ...

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

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7. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of 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 . . . pharmacy . . . who maintains a stock of dangerous drugs or dangerous devices.

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

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

8. Section 4104(b) of the Code states:

"Every pharmacy shall have written policies and procedures for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy."

9. Section 4105 of the Code states:

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

"(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

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

1           "(d) Any records that are maintained electronically shall be maintained so that the  
2 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the  
3 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on  
4 duty, shall, at all times during which the licensed premises are open for business, be able to  
5 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug  
6 or dispensing-related records maintained electronically.

7           "(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request,  
8 grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b),  
9 and (c) be kept on the licensed premises.

10           (2) A waiver granted pursuant to this subdivision shall not affect the board's authority  
11 under this section or any other provision of this chapter."

12           10. California Code of Regulations, title 16, section 1714, states, in pertinent part:

13           “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
14 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.  
15 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice  
16 of pharmacy.

17           ...

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

22           ...

23           11. California Code of Regulations, title 16, section 1715.6, states:

24           “The owner shall report to the Board within thirty (30) days of discovery of any loss of the  
25 controlled substances, including their amounts and strengths.”

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

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

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

7 13. California Health and Safety Code section 11208 states:

8 "In a prosecution under this division, proof that a defendant received or has had in his  
9 possession at any time a greater amount of controlled substances than is accounted for by any  
10 record required by law or that the amount of controlled substances possessed by the defendant is a  
11 lesser amount than is accounted for by any record required by law is prima facie evidence of  
12 guilt."

13 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licensee found to have committed a violation or violations of  
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case.

17 15. Section 118, subdivision (b), of the Code provides that the expiration of a license  
18 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
19 within which the license may be renewed, restored, reissued or reinstated.

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21 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

22 16. Section 4022 of the Code states:

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

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

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1           21. Respondent Savco did not have written policies and procedures on theft, diversion or  
2 self-use in place at the time of the employee pilferage. Respondent Savco also failed to have in  
3 place an effective control on the security of controlled substances, and failed to adequately  
4 maintain inventory of controlled substances.

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6                                   **CAUSES FOR DISCIPLINE AS TO RESPONDENT PUCCINELLI**

7   **FIRST CAUSE FOR DISCIPLINE**

8   (Failure to Maintain Security of Controlled Substances)

9           22. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or  
10 (o) of the Code, section 11208 of the Health and Safety Code, and/or California Code of  
11 Regulations, title 16, section 1714, subdivision (d), in that, as described in paragraphs 18-20  
12 above, Respondent Puccinelli failed to maintain the security of the controlled substances  
13 received, dispensed and/or otherwise handled therein.

14   **SECOND CAUSE FOR DISCIPLINE**

15   (Failure to Maintain Current Inventory of Controlled Substances)

16           23. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or  
17 (o) of the Code, section 11208 of the Health and Safety Code, and/or California Code of  
18 Regulations, title 16, section 1718, in that, as described in paragraphs 18-20 above, Respondent  
19 Puccinelli failed to maintain an accurate and complete inventory of controlled substances  
20 received, dispensed and/or otherwise handled therein.

21   **THIRD CAUSE FOR DISCIPLINE**

22   (Failure to Maintain Policies and Procedures)

23           24. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or  
24 (o), and/or 4104(b) of the Code, in that, as described in paragraph 21 above, Respondent  
25 Puccinelli failed to have written policies and procedures on theft/diversion or self-use in place.

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1 CAUSES FOR DISCIPLINE AS TO RESPONDENT SAVCO

2 FOURTH CAUSE FOR DISCIPLINE

3 (Failure to Maintain Security of Controlled Substances)

4 25. Respondent Savco is subject to disciplinary action under sections 4301(j) and/or (o),  
5 and 4081 of the Code, section 11208 of the Health and Safety Code, and/or California Code of  
6 Regulations, title 16, section 1714, subdivision (b), in that, as described in paragraphs 18-20  
7 above, Respondent Savco failed to maintain the security of the controlled substances received,  
8 dispensed and/or otherwise handled therein.

9 FIFTH CAUSE FOR DISCIPLINE

10 (Failure to Maintain Accurate Controlled Substances Inventory)

11 26. Respondent Savco is subject to disciplinary action under sections 4301(j) and/or (o),  
12 and 4081 of the Code, section 11208 of the Health and Safety Code, and/or California Code of  
13 Regulations, title 16, section 1718 in that, as described in paragraphs 18-20 above, Respondent  
14 Savco failed to maintain an accurate and complete inventory of controlled substances received,  
15 dispensed and/or otherwise handled therein.

16 SIXTH CAUSE FOR DISCIPLINE

17 (Failure to Maintain Policies and Procedures)

18 27. Respondent Savco is subject to disciplinary action under sections 4301(j) and/or (o),  
19 and 4104(b) of the Code, in that, as described in paragraph 21 above, Respondent Savco failed to  
20 have written policies and procedures on theft/diversion or self-use in place.

21 SEVENTH CAUSE FOR DISCIPLINE

22 (Failure to Report Drug Loss)

23 28. Respondent Savco is subject to disciplinary action under sections 4301(j) and/or (o),  
24 and California Code of Regulations, title 16, section 1715.6, in that, as described in paragraphs  
25 18-20 above, Respondent Savco failed to report the loss of controlled substances to the Board  
26 within 30 days.

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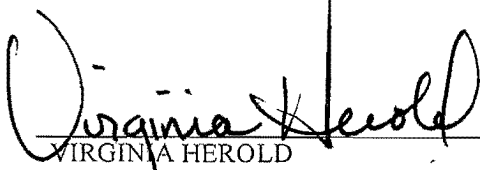


PRAYER

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 26552, issued to John Michael Puccinelli (Respondent Puccinelli);
2. Revoking or suspending Pharmacy Permit Number PHY 32506, issued to Respondent Savco Generic Drugs (Respondent Savco);
3. Forbidding Respondent Puccinelli and Savco owners and officers (James W. Junker, Lloyd Ando, and Ron Sakamoto) from serving as a manager, administrator, owner, member, officer, director, associate, or partner of Respondent Savco or of any other Board licensee, pursuant to Business and Professions Code section 4307;
4. Ordering John Michael Puccinelli and Savco Generic Drugs jointly and severally 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;
5. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/09

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

SF2009404536