

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHAEL A. CACCIOTTI
Deputy Attorney General
4 State Bar No. 129533
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2932
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3539

13 **MODERN HEALTHCARE, INC.,**
14 **d.b.a., AD-RX PHARMACY**

A C C U S A T I O N

15 6240 Wilshire Blvd.

16 Los Angeles, CA 90048

17 **IRA R. HALPERN, Owner and President**

18 **RICHARD I. KATZ, Owner and Secretary**

19 **ROBERT ANTOINE CHARLES,**

20 **Pharmacist-In-Charge,**

21 **(From 5/4/06 to 7/2/07)**

22 **RAMONA EDERY,**

23 **Pharmacist-In-Charge,**

24 **(From 7/26/07 to present)**

25 Pharmacy Permit No. PHY 44831

26 and

27 **ROBERT ANTOINE CHARLES**

28 6240 Wilshire Blvd.

Los Angeles, CA 90048

Pharmacist License No. RPH 51100

Respondents.

Complainant alleges:

PARTIES

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

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

4 7. Section 4113, subdivision (a) states:

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

8 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
9 subject to discipline, including suspension or revocation.

10 9. Section 4301 states, in pertinent part:

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

14

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

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

22 10. Section 4401 states:

23 “Every pharmacist who desires to retain his or her license on the books of the board shall
24 biennially pay to the executive officer of the board the renewal fee, established by the board,
25 within the limits prescribed by this chapter. In return for the payment of the renewal fee, a
26 certificate of renewal shall be issued.”

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1714 states, in pertinent part:

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

8

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

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

15 “Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions
16 Code shall be considered to include complete accountability for all dangerous drugs handled by
17 every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories
18 required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least
19 3 years after the date of the inventory.”

20 **COST RECOVERY**

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

25 **CONTROLLED SUBSTANCE**

26 14. “Norco,” is the brand name for Hydrocodone 10mg./Acetaminophen 325mg. It is a
27 Schedule III controlled substance as defined in Health and Safety Code section 11056,
28 subdivision (e)(4) and is categorized as a dangerous drug pursuant to section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate Security for Dangerous Drugs)**

3 15. Respondents, Pharmacy and Charles and each of them, are subject to disciplinary
4 action under section 4301, subdivisions (j) and (o), as defined in California Code of Regulations,
5 title 16, section 1714, subdivisions (b) and (d), in that Respondents failed to maintain adequate
6 security for dangerous drugs, as follows:

7 a. On or about June 20, 2007, Respondents notified the Board of a loss of approximately
8 470,000 tablets of hydrocodone with acetaminophen 10mg./325mg., due to employee pilferage.
9 An audit of Respondent Pharmacy's records of acquisition and disposition revealed that from on
10 or about December 27, 2006 to on or about June 14, 2007, Respondents had a shortage of at least
11 343,378 tablets of hydrocodone with acetaminophen 10mg./325mg.

12 b. On or about February 11, 2008, the Board conducted a routine inspection and
13 investigation at Respondent Pharmacy. The inspection revealed that the controlled substances,
14 Schedules II, III, IV, and V were dispersed throughout the pharmacy. A review of the Drug
15 Enforcement Administration (DEA) 222 forms and the Schedule II controlled substance order
16 forms revealed the date and quantities received were not documented on the DEA 222 forms upon
17 receiving the Schedule II controlled substance deliveries. The inspection further revealed that
18 re-ordering of prescription drugs was not designated to a specific person. The pharmacy
19 technicians and pharmacists were allowed to order drugs from AmerisourceBergen. When the
20 drugs were delivered, a pharmacist did not always sign for the deliveries and the invoices were
21 not always reviewed or signed by the pharmacist. A correction was ordered by the Board.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Failure to Maintain Current Inventory and Complete Accountability)**

24 16. Respondents, Pharmacy and Charles and each of them, are subject to disciplinary
25 action under section 4301, subdivisions (j) and (o), for violating section 4081, subdivisions (a)
26 and (b), as defined in California Code of Regulations, title 16, section 1718, in that Respondents

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1 failed to maintain current inventory and complete accountability for all dangerous drugs handled
2 by every licensee. Complainant refers to, and by this reference incorporates, the allegations set
3 forth above in paragraph 15, subparagraphs (a) through (b), inclusive, as though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Renew Pharmacist License)**

6 17. Respondent Charles is subject to disciplinary action under section 4401, in that on or
7 about July 31, 2009, Respondent's Pharmacist License No. RPH 51100 expired and has not been
8 renewed. On or about August 22, 2009, the Board mailed Respondent a delinquency notice, with
9 no response from Respondent.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Timely Notify the Board of a Designated Pharmacist-in-Charge)**

12 18. Respondent Pharmacy is subject to disciplinary action under section 4113,
13 subdivision (a), in that Respondent failed to timely notify the Board in writing within 30 days of
14 designation, of the identity and license number of the designated Pharmacist-in-Charge and the
15 date of designation. On or about July 2, 2007, Respondent Charles disassociated, as the
16 Pharmacist-in-Charge of Respondent Pharmacy. On or about July 26, 2007, Ramona Ederly was
17 associated, as the new Pharmacist-in-Charge of Respondent Pharmacy. On or about August 15,
18 2007, the Board sent a letter addressed to Pharmacist-in-Charge Respondent Charles, requesting
19 information regarding the loss or theft of controlled substances that occurred from June 2006
20 through May 2007, with a reply requested by August 31, 2007. However, due to Respondent
21 Charles no longer being the Pharmacist-in-Charge of Respondent Pharmacy, there was a delay in
22 the Board's letter getting to the correct person. On or about September 18, 2007, Sherri
23 Cherman, Pharm.D., EVP/CCO of Respondent Pharmacy, received the Board's letter and sent a
24 response to the Board, dated September 20, 2007.

25 **DISCIPLINARY CONSIDERATIONS**

26 19. In order to determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about March 7, 2007, the Board issued Citation No. CI 2006

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1 32299, against Respondent AD-RX Pharmacy for violating California Code of Regulations, title
2 16, section 1716 (variation from prescription). The citation and order is now final.

3 **PRAYER**

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

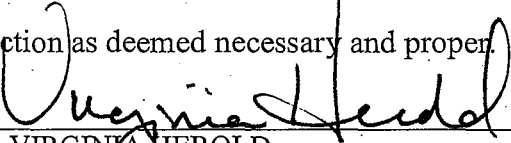
6 1. Revoking or suspending Pharmacy Permit No. PHY 44831, issued to Respondent
7 Pharmacy;

8 2. Revoking or suspending Pharmacist License No. RPH 51100, issued to Respondent
9 Charles;

10 3. Ordering Respondents, Pharmacy and Charles to pay the Board the reasonable costs
11 of the investigation and enforcement of this case, pursuant to section 125.3;

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

13 DATED: 1/6/10


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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