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

11 In the Matter of the Accusation Against:

Case No. 3781

12 **POKEY BONES LLC DBA FAAST**
13 **PHARMACY; LISA MARIE FAAST,**
14 **PHARMACIST-IN-CHARGE**
3400 Colloway Drive #701
Bakersfield, CA 93312

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 47454**

Respondent,

17 **AND**

18 **LISA MARIE FAAST**
3400 Colloway Drive #701
19 Bakersfield, CA 93312

20 **Pharmacist License No. RPH 52905**

21 Respondent.

22 Complainant alleges:

23 PARTIES

24 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
25 capacity as the Executive Officer of the California State Board of Pharmacy ("Board"),
26 Department of Consumer Affairs.

27 2. On or about March 10, 2006, the Board issued Pharmacy License No. PHY 47454 to
28 Pokey Bones LLC dba Faast Pharmacy ("Respondent Faast Pharmacy"). The Pharmacy License

1 was in full force and effect at all times relevant to the charges brought herein and expires on
2 March 1, 2011, unless renewed.

3 3. On or about September 6, 2001, the Board issued Pharmacist License No. RPH 52905
4 to Lisa Marie Faast ("Respondent L. Faast"). The Pharmacist License was in full force and effect
5 at all times relevant to the charges brought herein and will expire on February 28, 2011, unless
6 renewed.

7 4. The Board records indicate Respondent Lisa Marie Faast is and has been the
8 Pharmacist-in-Charge for Respondent Faast Pharmacy since March 10, 2006.

9 JURISDICTION

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

13 6. Section 4005 of the Code provides that the Board may adopt rules and regulations, as
14 may be necessary for the protection of the public. Included therein shall be the right to adopt
15 rules and regulations as follows: for the proper and more effective enforcement and
16 administration of this chapter; pertaining to the practice of pharmacy; and pertaining to
17 establishments wherein any drug or device is compounded, prepared, furnished, or dispensed.

18 7. Section 4011 of the Code provides that the Board shall administer and enforce both
19 the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) and the Uniform Controlled Substances
20 Act (Health & Safety Code, § 11000 et seq.).

21 8. Section 4113(b) of the Code states: "The pharmacist-in-charge shall be responsible
22 for a pharmacy's compliance with all state and federal laws and regulations pertaining to the
23 practice of pharmacy."

24 9. Section 4300(a) of the Code provides that every license issued by the Board may be
25 suspended or revoked.

26 10. Section 4402(a) of the Code provides that any pharmacist license that is not renewed
27 within three years following its expiration may not be renewed, restored, or reinstated and shall
28 be canceled by operation of law at the end of the three-year period.

1 physician and surgeon in Section 2242 of the Code and the requirements for a veterinarian in
2 Section 2032.1 of Title 16 of the California Code of Regulations.

3 15. Health and Safety Code section 11165 provides, in pertinent part, for establishment
4 and maintenance of a Controlled Substance Utilization Review and Evaluation System (CURES)
5 for the electronic monitoring of prescribing and dispensing of Schedule II, III, and IV controlled
6 substances, and requires, in pertinent part, that for each prescription for a Schedule II, III, or IV
7 controlled substance, the dispensing pharmacy or clinic transmit a report to the Department of
8 Justice with specific information on the patient, prescriber, controlled substance, and prescription.

9 16. California Code of Regulations, title 16, section 1716, states in pertinent part:

10 "Pharmacists shall not deviate from the requirements of a prescription except upon the prior
11 consent of the prescriber or to select the drug product in accordance with Section 4073. . . ."

12 17. California Code of Regulations, title 16, section 1717(d) states: "A pharmacist may
13 furnish a drug or device pursuant to a written or oral order from a prescriber licensed in a State
14 other than California in accordance with Business and Professions Code section 4005."

15 18. California Code of Regulations, title 16, section 1761, states:

16 (a) No pharmacist shall compound or dispense any prescription which contains any
17 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
18 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
19 validate the prescription.

20 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
21 a controlled substance prescription where the pharmacist knows or has objective reason to know
22 that said prescription was not issued for a legitimate medical purpose.

23 19. Section 4067(b) of the Code provides, in pertinent part, that a person or entity that commits
24 a violation of this section is subject to either a fine of up to twenty-five thousand dollars
25 (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-
26 five thousand dollars (\$25,000) per occurrence.

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1 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
2 administrative law judge to direct a licensee found to have committed a violation of the licensing
3 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

4 21. Section 4306.5 of the Code states:

Unprofessional conduct for a pharmacist may include any of the following:

5 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of
6 his or her education, training, or experience as a pharmacist, whether or not the act
7 or omission arises in the course of the practice of pharmacy or the ownership,
8 management, administration, or operation of a pharmacy or other entity licensed by
9 the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or
10 implement his or her best professional judgment or corresponding responsibility
11 with regard to the dispensing or furnishing of controlled substances, dangerous
12 drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult
appropriate patient, prescription, and other records pertaining to the performance of
any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain
and retain appropriate patient-specific information pertaining to the performance of
any pharmacy function.

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 22. Section 4021 of the Code provides that a "controlled substance" means any substance
15 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

16 23. Section 4022 of the Code states:

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

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

(b) Any device that bears the statement: "Caution: federal law restricts this device
20 to sale by or on the order of a _____," "Rx only," or words of similar import, the
21 blank to be filled in with the designation of the practitioner licensed to use or order
22 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.

23 24. **Cialis** is a brand name for **Tadalafil**, a dangerous drug pursuant to Business and
24 Professions Code section 4022. It is used in the treatment of erectile dysfunction.

25 25. **Viagra** is a brand name for **Sildenafil citrate**, a dangerous drug pursuant to Business
26 and Professions Code section 4022. It is used in the treatment of erectile dysfunction.

27 26. **Butalbital** is a barbiturate, a dangerous drug pursuant to Business and Professions
28 Code section 4022. It is commonly prescribed for the treatment of pain.

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1 27. **Tramadol** is a synthetic analgesic opiate, a dangerous drug pursuant to Business and
2 Professions Code section 4022. It is a narcotic-like pain reliever used for treating moderate to
3 moderately severe pain.

4 28. **Ultram** is a brand name for Tramadol, a centrally-acting analgesic, a dangerous drug
5 pursuant to Business and Professions Code section 4022. Tramadol is used for treating moderate
6 to moderately severe pain.

7 29. **Ultracet** is a brand name for **Tramadol**, a dangerous drug pursuant to Business and
8 Professions Code section 4022. Tramadol is an analgesic and used to treat the management of
9 moderate to moderately severe pain.

10 30. **Fioricet** is a brand name and made from the combination of **Butalbital** a barbiturate,
11 **Acetaminophen**, and **Caffeine**. It is a dangerous drug pursuant to Business and Professions
12 Code section 4022 and is used to treat tension headaches that are caused by muscle contractions.

13 31. **Flexeril** is a brand name for **Cyclobenzaprine**, a dangerous drug pursuant to
14 Business and Professions Code section 4022. It is a muscle relaxant drug.

15 32. **Omnipen** is a brand name for **Ampicillin**, a dangerous drug pursuant to Business and
16 Professions Code 4022. It belongs to a class of antibiotics called penicillins and is for the
17 treatment of bacterial infections.

18 33. **Amoxicillin** is a semisynthetic penicillin antibiotic and a dangerous drug pursuant to
19 Business and Professions Code section 4022. It is used to used to treat bacterial infections.

20 34. **Soma** is a brand name for **Carisoprodol**, a centrally-acting skeletal muscle relaxant
21 and a dangerous drug pursuant to Business and Professions Code section 4022.

22
23 **CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS**

24 FIRST CAUSE FOR DISCIPLINE

25 (Improper Dispensing or Furnishing Dangerous Drugs on the Internet)

26 35. Respondents are subject to discipline under Code section 4067(a), in that on or about
27 and between March 18, 2008 and June 6, 2008, Respondents dispensed, furnished, or caused to be
28 dispensed or furnished, dangerous drugs, as defined in Code section 4022, on the Internet for

1 delivery to persons in the state of California without a prescription issued pursuant to a good faith
2 prior examination, and the Respondent knew or reasonably should have known that the
3 prescription was not issued pursuant to a good faith prior examination, or the Respondent did not
4 act in accordance with Section 1761 of Title 16 of the California Code of Regulations:

5 a. Dispensing or furnishing One Thousand One Hundred Three (1103) prescriptions for
6 dangerous drugs, including **Ultracet, Ultram, Fioricet, Omnipen, Soma, Cialis, Flexeril,** and
7 **Viagra.**

8 SECOND CAUSE FOR DISCIPLINE

9 (Failure to Report Dispensing of Controlled Substances to CURES)

10 36. Respondents are subject to discipline under section 11165(d) of the Health and Safety
11 Code, in that on or about and between March 18, 2008 and June 6, 2008, Respondents dispensed
12 prescriptions for Schedule II, Schedule III, or Schedule IV controlled substances, without
13 adequately reporting the prescriptions to the CURES database maintained by the Department of
14 Justice:

15 a. Dispensing One Hundred Eighty Three (183) prescriptions for **Fioricet** (brand name)
16 containing **Butalbital** a Schedule III controlled substance, per Health and Safety Code section
17 11056(c)(3).

18 THIRD CAUSE FOR DISCIPLINE

19 (Filling Prescriptions Written by an Unauthorized Person)

20 37. Respondents are subject to discipline under section 4005(a) and California Code of
21 Regulations 1717, in that on or about and between March 31, 2008 and June 6, 2008,
22 Respondents dispensed prescriptions written by an unauthorized person.

23 a. Dispensing Thirteen (13) prescriptions for Onochie Aghaegbuna, a person who was
24 unauthorized to write prescriptions after surrendering Virginia license 0101230462 on March 31,
25 2008.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 38. Respondents are subject to discipline under sections 4301(j) and 4301(o) of the Code,
4 in that on or about and between March 31, 2008 and June 6, 2008, Respondents violated any of
5 the statutes of this state, of any other state, or of the Unites States regulating controlled substances
6 and dangerous drugs and violated or attempted to violate, directly or indirectly, or assisting in or
7 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
8 applicable federal and state laws and regulations governing pharmacy, including regulations
9 established by the board or by any other state or federal regulatory agency.

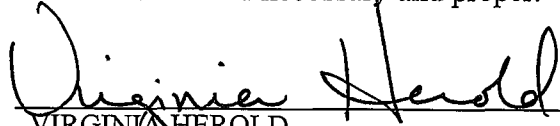
10 a. Dispensing a prescription to an Idaho resident, without obtaining a license from the
11 Idaho Board of Pharmacy, in violation of the Idaho Code section 54-1721.

12
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 revoking or suspending Pharmacy License No. PHY 47454
- 17 issued to Pokey Bones LLC dba Faast Pharmacy;
- 18 2. Revoking or suspending Pharmacist License No. RPH 52905 issued to Lisa Marie
- 19 Faast;
- 20 3. Pursuant to Section 125.3 of the Code, for an order requiring Respondent Pokey
- 21 Bones LLC dba Faast Pharmacy and Respondent Lisa Marie Faast, to jointly and severally pay to
- 22 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case;
- 23 4. Taking such other and further action as is deemed necessary and proper.

24 DATED: 7/19/10



25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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