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

10 In the Matter of the Accusation Against:

Case No. 3969

11 **JOHN WAITO NG**
12 **43857 Cameron Hills Drive**
13 **Fremont, CA 94539**
Pharmacist License No. RPH 33438

ACCUSATION

14 Respondent.

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16 Complainant alleges:

17 PARTIESe

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

20 2.e On or about October 10, 1979, the Board of Pharmacy issued Pharmacist Licensee
21 Number RPH 33438 to John Waito Ng (Respondent). The Pharmacist License was in full force
22 and effect at all times relevant to the charges brought herein and will expire on October 31, 2012,
23 unless renewed.

24 JURISDICTION

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

1 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 10. Section 4060 of the Code, in pertinent part, prohibits possession of any controlled
4 substance, except that furnished upon the prescription of an authorized prescriber.

5 11. Section 4063 of the Code provides, in pertinent part, that no prescription for a
6 dangerous drug may be refilled except upon authorization of the prescriber.

7 12. Section 4324(a) of the Code provides:

8 “Every person who signs the name of another, or of a fictitious person, or falsely makes,
9 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
10 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
11 state prison, or by imprisonment in the county jail for not more than one year.”

12 13. Health and Safety Code section 11158 provides, in pertinent part, that except under
13 certain conditions, no controlled substance classified in Schedule III, IV, or V may be dispensed
14 without a prescription meeting the requirements of Health & Safety Code, § 11500 et seq.

15 14. Health and Safety Code section 11171 provides that no person shall prescribe,
16 administer, or furnish a controlled substance except under the conditions and in the manner
17 provided by the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

18 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
19 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
20 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
21 or subterfuge; or (2) by the concealment of a material fact.

22 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
23 any narcotic drug listed in Schedules III-V, absent a valid prescription.

24 17. Health and Safety Code section 11352, in pertinent part, makes it unlawful to sell,
25 transport, furnish, administer, or give away, any controlled substance classified in Schedule III,
26 IV, or V which is a narcotic drug, unless upon written prescription of a authorized prescriber.

27 18. Health and Safety Code section 11368 provides:
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1 "Every person who forges or alters a prescription or who issues or utters an altered
2 prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any
3 narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription,
4 or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription,
5 shall be punished by imprisonment in the county jail for not less than six months nor more than
6 one year, or in the state prison."

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

10 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

11 20. Section 4021 of the Code states:

12 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
13 11053) of Division 10 of the Health and Safety Code."

14 21. Section 4022 of the Code states, in pertinent part:

15 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
16 except veterinary drugs that are labeled as such, and includes the following:

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

19 ...

20 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
21 prescription or furnished pursuant to Section 4006."

22 22. Azithromycin is a generic for Zithromax, a dangerous drug as designated by Business
23 and Professions Code section 4022. It is an antibiotic.

24 23. Robitussin AC Syrup is a brand name for guaifenesin with codeine syrup, which is a
25 Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1)
26 and a dangerous drug as designated by Business and Professions Code section 4022. It is a cough
27 medication.

1 29. During the investigation of the matter, Respondent admitted that he fraudulently
2 wrote and filled approximately 30 prescriptions for his wife over the previous two year period.

3 FIRST CAUSE FOR DISCIPLINE

4 (Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

5 30. Respondent is subject to discipline under section 4301(f) of the Code in that
6 Respondent, as described above in paragraphs 27, 28 and 29 above, committed one or more acts
7 involving moral turpitude, dishonesty, fraud, deceit, or corruption.

8 SECOND CAUSE FOR DISCIPLINE

9 (Making or Signing False Documents(s))

10 31. Respondent is subject to discipline under section 4301(g) of the Code in that
11 Respondent, as described in paragraphs 27, 28 and 29 above, made or signed document(s) falsely
12 representing the existence or nonexistence of a state of facts.

13 THIRD CAUSE FOR DISCIPLINE

14 (Unlawful Furnishing/Dispensing of Controlled Substances/Dangerous Drugs)

15 32. Respondent is subject to discipline under sections 4301(j) and/or (o) of the Code, in
16 that Respondent, as described in paragraphs 27, 28 and 29 above, furnished/dispensed, attempted
17 or assisted or abetted furnishing/dispensing, or conspired to furnish/dispense, controlled
18 substances and/or dangerous drugs without valid prescriptions, in violation of section 4059 of the
19 Code.

20 FOURTH CAUSE FOR DISCIPLINE

21 (Unlawful Possession and/or Transport of Controlled Substances/Dangerous Drugs)

22 33. Respondent is subject to discipline under sections 4301(j) and/or (o) of the Code in
23 that Respondent, as described in paragraphs 27, 28 and 29 above, possessed/transported,
24 attempted or assisted or abetted possession/transport of, and/or conspired to possess/transport,
25 without valid prescriptions, controlled substances and/or dangerous drugs, in violation of section
26 4060 of the Code and/or Health and Safety Code section(s) 11350 and/or 11352.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Dispensing/Administering/Furnishing Pursuant to Invalid Prescription(s))

3 34. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in
4 that Respondent, as described in paragraphs 27, 28 and 29 above, dispensed/administered/
5 furnished, attempted or assisted or abetted dispensing/administering/furnishing, or conspired to
6 dispense/administer/furnish, controlled substance prescriptions not meeting requirements of the
7 Uniform Controlled Substances Act, in violation of Health and Safety Code section(s) 11158
8 and/or 11171.

9 SIXTH CAUSE FOR DISCIPLINE

10 (False or Fraudulent Procurement of Controlled Substance(s)/Prescription(s))

11 35. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in
12 that Respondent, as described in paragraphs 27, 28 and 29 above, obtained/attempted to obtain
13 and/or assisted in or abetted and/or conspired to obtain controlled substances, procured/attempted
14 to procure, assisted in or abetted, and/or conspired to procure administration of or prescriptions
15 for controlled substances, by fraud, deceit, subterfuge misrepresentation, or concealment of fact,
16 in violation of Health and Safety Code section 11173, subdivision (a).

17 SEVENTH CAUSE FOR DISCIPLINE

18 (Forgery of Prescription(s))

19 36. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in
20 that Respondent, as described in paragraphs 27, 28 and 29 above, signed the name of another, or
21 falsely made, altered, forged, uttered, published, passed, or attempted to pass, as genuine, a
22 prescription for controlled substances, or obtained a narcotic drug by a forged, fictitious, or
23 altered prescription, or had in his possession a narcotic drug secured by a forged, fictitious, or
24 altered prescription, in violation of section 4324 and Health and Safety Code section 11168.

25 EIGHTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 37. Respondent is subject to disciplinary action under section 4301 of the Code in that
28 Respondent, by way of the conduct described in paragraphs 27, 28 and 29 above, engaged in

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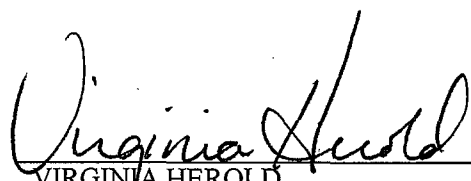
“unprofessional conduct” not becoming the profession of pharmacy.

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 33438, issued to John Waito Ng;
2. Ordering John Waito Ng 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/6/11


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

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