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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4124

11 **DIVINA GRACIA RENA DINULOS**
12 **3 Captain Lane**
13 **Redwood Shores, CA 94065**

A C C U S A T I O N

14 **Pharmacist License No. RPH 59466**

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. 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. On or about April 10, 2007, the Board of Pharmacy issued Pharmacist License
21 Number RPH 59466 to Divina Gracia Rena Dinulos (Respondent). The Pharmacist License was
22 in full force and effect at all times relevant to the charges brought herein and will expire on
23 September 30, 2012, unless renewed.

24
25 JURISDICTION

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

1 8. California Code of Regulations, title 16, section 1770, states:

2 "For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by her license or registration in a
7 manner consistent with the public health, safety, or welfare."

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

10 10. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign
11 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as
12 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

13 11. Health and Safety Code section 11150 provides, in pertinent part, that no person other
14 than an authorized prescriber shall write or issue a prescription.

15 12. Health and Safety Code section 11157 provides that no person shall issue a
16 prescription that is false or fictitious in any respect.

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

20

21 DANGEROUS DRUGS

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

23 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
24 except veterinary drugs that are labeled as such, 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 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
2 prescription or furnished pursuant to Section 4006.”

3 15. **Omeprazole**, sold under brand names including **Prilosec**, is a dangerous drug as
4 designated by Business and Professions Code section 4022. It is used for treating symptoms of
5 gastroesophageal reflux disease (GERD), as well as other stomach conditions.

6 16. **Atenolol**, sold under brand names including **Tenormin**, is a dangerous drug as
7 designated by Business and Professions Code section 4022. It is used to treat hypertension.

8 17. **Glimepiride**, sold under brand names including **Amaryl**, is a dangerous drug as
9 designated by Business and Professions Code section 4022. It is used to treat type 2 diabetes.

10 18. **Metformin**, sold under brand names including **Fortamet**, is a dangerous drug as
11 designated by Business and Professions Code section 4022. It is used to treat type 2 diabetes.

12 19. **Simvastatin**, sold under brand names including **Zocor**, is a dangerous drug as
13 designated by Business and Professions Code section 4022. It is used to treat high cholesterol.

14 20. **Oseltamivir**, sold under brand names including **Tamiflu**, is a dangerous drug as
15 designated by Business and Professions Code section 4022. It is used to prevent/treat influenza.

16 21. **Carvedilol**, sold under brand names including **Coreg**, is a dangerous drug as
17 designated by Business and Professions Code section 4022. It is used to treat hypertension.

18 22. **Amlodipine**, sold under brand names including **Norvasc**, is a dangerous drug as
19 designated by Business and Professions Code section 4022. It is used to treat hypertension.

20 23. **Clopidogrel**, sold under brand names including **Plavix**, is a dangerous drug as
21 designated by Business and Professions Code section 4022. It is used to prevent blood clots.

22 24. **Losartan**, sold under brand names including **Cozaar**, is a dangerous drug as
23 designated by Business and Professions Code section 4022. It is used to treat hypertension.

24 25. **Pioglitazone**, sold under brand names including **Actos**, is a dangerous drug as
25 designated by Business and Professions Code section 4022. It is used to treat type 2 diabetes.

26 26. **Azithromycin**, sold under brand names including **Zithromax**, is a dangerous drug as
27 designated by Business and Professions Code section 4022. It is a macrolide antibiotic drug.

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FACTUAL BACKGROUND

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2 27. From an unknown date on or prior to October 24, 2008 until on or about November
3 19, 2010, Respondent was employed as a pharmacist at a CVS (previously Longs) Pharmacy in
4 San Mateo, CA (# 9554; PHY 49313), where she had access to both controlled substances and
5 dangerous drugs. For at least part of that time, Respondent served as pharmacist-in-charge (PIC).

6 28. Between in or about April 2009 and in or about September 2010, Respondent used
7 her access to divert, steal or fraudulently procure from her pharmacy employer, and/or fabricate
8 prescriptions for, dangerous drugs including **omeprazole, atenolol, glimepiride, metformin,**
9 **simvastatin, cavedilol, amlodipine, Tamiflu, Plavix, Cozaar, Actos, and/or azithromycin.**

10 29. The exact number of instances of diversion, theft, fraudulent procurement and/or false
11 prescriptions by Respondent, and the full quantity of dangerous drugs taken, are not known, but
12 investigation(s) conducted by CVS Pharmacy and by Board Inspector(s) revealed:

13 a. In or about November 2010, CVS Loss Prevention investigators followed up on
14 a return transaction wherein Respondent processed her own return of a diaper product without the
15 physical product being returned. The investigators reviewed Respondent's purchase history and
16 noted several purchases/receipt by Respondent of prescription drugs in other persons' names.

17 b. When confronted, Respondent subsequently admitted to CVS investigators
18 and/or to Board Inspectors that since approximately April 2009 she had created false CVS patient
19 profiles and repeatedly created and filled fraudulent (unauthorized) prescriptions in the names of
20 family members, including her brother, uncle, daughter, and husband, and in her own name.

21 c. Respondent did so by creating false patient profiles (with some information true
22 and some fictitious), and by fabricating purported "call in" prescriptions from randomly-selected
23 prescribers, which she entered into the CVS system and filled or caused to be filled.

24 d. Further investigation confirmed that Respondent had done at least the following
25 between in or about April 2009 and in or about September 2010:

- created a fraudulent prescription for **omeprazole** for patient I.R. (Respondent's
brother) and fraudulently furnished 90 dosage units of this drug to patient I.R.;

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- 1 • created seven (7) fraudulent prescriptions for patient B.N. (Respondent's uncle) and
2 pursuant to those prescriptions fraudulently furnished 540 dosage units of **atenolol**, 180
3 dosage units of **glimeripide**, 360 dosage units of **metformin**, 180 dosage units of
4 **simvastatin**, 90 dosage units of **carvedilol**, and 90 dosage units of **amlodipine**;
5 • created a further three (3) fraudulent prescriptions for patient B.N. for **Plavix**,
6 **Cozaar**, and **Actos**, which prescriptions were never filled;
7 • created a fraudulent prescription for **Tamiflu** for patient D.D. (Respondent's
8 daughter) and fraudulently furnished 25 mls of this drug to patient D.D.;
9 • created a fraudulent prescription for **Tamiflu** for patient H.D. (Respondent's
10 husband) and fraudulently furnished 20 dosage units of this drug to patient H.D.; and
11 • created a fraudulent prescription for **azithromycin** for herself and fraudulently
12 furnished 6 dosage units of this drug to herself.
- 13 e. At least some of these prescriptions were billed to insurance.
14 f. At least some of the drugs furnished were mailed or otherwise transported by
15 Respondent to Respondent's relative(s) in the Philippines.

16
17 FIRST CAUSE FOR DISCIPLINE

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

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

22
23 SECOND CAUSE FOR DISCIPLINE

24 (Making or Signing False Documents(s))

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

1 THIRD CAUSE FOR DISCIPLINE

2 (Furnishing Without Prescription(s))

3 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, in that Respondent, as described in paragraphs 27 to 29 above, furnished to
5 herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
6 abetted furnishing without a valid prescription for, one or more dangerous drugs.

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Making, Uttering and/or Using False or Forged Prescriptions)

10 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
11 4324 of the Code, in that Respondent, as described in paragraphs 27 to 29 above, falsely made,
12 altered, forged, uttered, published, passed, or attempted to pass, a false, forged, fictitious or
13 altered prescription, had in her possession a drug secured by a false, forged, fictitious or altered
14 prescription, or attempted, conspired and/or assisted in or abetted any of these acts.

15
16 FIFTH CAUSE FOR DISCIPLINE

17 (Issuance of Prescription(s) Without Authority; False Prescription(s))

18 34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
19 and/or Health and Safety Code section(s) 11150 and/or 11157, in that Respondent, as described in
20 paragraphs 27 to 29 above, issued prescriptions without authority to do so, issued a false or
21 fictitious prescription, or attempted, conspired and/or assisted in or abetted any of these acts.

22
23 SIXTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 35. Respondent is subject to discipline under section 4301 of the Code in that
26 Respondent, as described in paragraphs 27 to 34 above, engaged in unprofessional conduct.

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DISCIPLINE CONSIDERATIONS

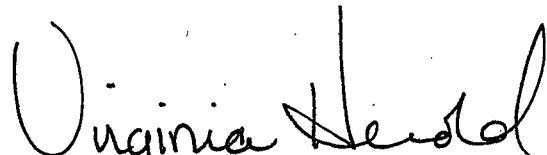
36. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about September 25, 2008, Citation No. CI 2008 37874 was issued to Respondent and modified on or about April 16, 2009. As modified, Citation No. CI 2008 37874 included a fine of \$3,250.00, and cited violations of California Code of Regulations, title 16, sections 1716 and 1707.2 based on a prescription dispensed with Cortisporin ear drops instead of Cortisporin eye drops as had been prescribed (deviation from prescription), and on Respondent's failure to conduct a patient consultation for the new prescription. That citation is now final and is incorporated by reference as if fully set forth herein.

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 59466, issued to Divina Gracia Rena Dinulos (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 11/16/11



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

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