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

11 In the Matter of the Accusation Against:

Case No. 4453

12 **MARIO G. OLIVARES**
13 **1225 Pfeifeir**
14 **El Cajon, CA 92020**

ACCUSATION

15 **Pharmacist License No. RPH 33252**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 21, 1979, the Board of Pharmacy issued Pharmacist License
23 Number RPH 33252 to Mario G. Olivares (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on June 30,
25 2013, unless renewed.
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JURISDICTION

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license
10 issued may be suspended or revoked."

STATUTORY PROVISIONS

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12 6. Section 4059 of the Code provides in part that a person may not furnish any
13 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17
18 7. Section 4060 of the Code states:

19 No person shall possess any controlled substance, except that furnished to a
20 person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
22 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
23 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
24 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
25 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
26 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
27 section shall not apply to the possession of any controlled substance by a
28 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
3 stock of dangerous drugs and devices.

4 8. Section 4301 of the Code states:

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

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

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

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

19 9. Health and Safety Code section 11377(a) provides that no person shall possess a
20 controlled substance without a prescription.

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

25 11. Health and Safety Code section 11379(a) provides that no person may furnish any
26 controlled substance without a valid prescription.

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REGULATORY PROVISIONS

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

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

COST RECOVERY

10 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request
11 the administrative law judge to direct a licentiate found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

DRUGS

14 14. Restoril, also known as temazepam, is a Schedule IV controlled substance pursuant to
15 Health and Safety Code section 11057(d)(29) and is a dangerous drug pursuant to Business and
16 Professions Code section 4022. Restoril is a central nervous system depressant used to treat
17 insomnia and sleep disorders.

18 15. Metformin, is a dangerous drug pursuant to Business and Professions Code section
19 4022.

FACTUAL ALLEGATIONS

20 16. Respondent was employed as a pharmacist at the Kaiser Permanente Pharmacy
21 located on Avocado Boulevard in La Mesa, California. In 2010 and 2011, audits revealed that
22 there were variances in audit counts or capsules of temazepam were missing from the inventory at
23 Kaiser Permanente Pharmacy. Two covert cameras were installed in the stock area of the
24 pharmacy in an effort to identify the individuals responsible for the loss.

25 17. On July 26 and 28, 2011, the Pharmacist in Charge conducted a count of temazepam
26 30mg and discovered that 101 capsules were missing. Video footage revealed that on July 26,
27 2011, Respondent stood in front of the bin where the temazepam 30mg was stored and removed
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1 one bottle of 100 capsules of temazepam from the bin at 7:06 p.m. when the pharmacy was
2 closed. At that time, Respondent was the only individual in the pharmacy and he left the
3 pharmacy at 7:16 p.m. Only one prescription for 30 capsules of temazepam was filled and sold
4 on July 26, 2011; Respondent did not fill that prescription. A bottle of 100 capsules of
5 temazepam could not be located.

6 18. On October 12 and 17, 2011, the Pharmacist in Charge conducted a count of
7 temazepam 30mg and discovered that 100 capsules were missing. Video footage revealed that on
8 October 16, 2011, Respondent stood in front of the bin where the temazepam 30mg was stored
9 and removed one bottle of 100 capsules of temazepam at 6:49 p.m. when the pharmacy was
10 closed. He left at 7:11 p.m. No prescriptions were filled on October 16, 2011 that could account
11 for the missing capsules and the bottle could not be located.

12 19. On December 14 and 16, 2011, the Pharmacist in Charge conducted a count of
13 temazepam 30mg and discovered that 100 capsules were missing. Video footage revealed that on
14 December 15, 2011, Respondent stood in front of the bin where the temazepam 30mg was stored
15 and removed one bottle of 100 capsules of temazepam at 6:10 p.m. He then went into employee
16 break room. At that time, Respondent was the only individual in the pharmacy and he left the
17 pharmacy shortly thereafter. No prescriptions were filled on December 15, 2011 that could
18 account for the missing capsules and the bottle could not be located.

19 20. On January 8, 2012, Kaiser personnel interviewed Respondent about the missing
20 temazepam. Respondent admitted to stealing the bottles of temazepam approximately three times
21 for his friend. He admitted in writing to the theft as well and to taking Metformin 500 mg from the
22 pharmacy.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct – Dishonesty and Deceit)

25 21. Respondent is subject to disciplinary action for unprofessional conduct under section
26 4301(f) of the Code in that Respondent's theft constitutes dishonesty and deceit, as is detailed in
27 paragraphs 16 through 20, incorporated herein by reference.
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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

3 22. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301(j) of the Code in that he violated California Health and Safety Code sections 11377(a), and
5 11173(a) and 11379(a), as is set forth in paragraphs 16 through 20, incorporated herein by
6 reference.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct – Violations of Chapter)

9 23. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(o) of the Code in that he violated the Pharmacy Act by illegally possessing a controlled
11 substance in violation of Code sections 4059(a) and 4060, as evidenced by his admissions and the
12 video footage as is set forth in paragraphs 16 through 20 above, incorporated herein by reference.

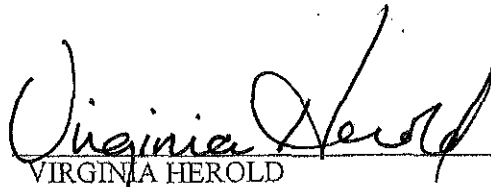
13 PRAYER

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 Pharmacist License Number RPH 33252, issued to Mario G.
17 Olivares;
- 18 2. Ordering Mario G. Olivares to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

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24 DATED: _____

3/5/13


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