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

11 In the Matter of the Accusation Against:

Case No. 4467

12 **ANTONIO PULIDO**
1848 E. 263rd Street
13 Lomita, CA 90717

A C C U S A T I O N

14 Pharmacist License No. RPH 61643

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 (Board).

20 2. On or about October 8, 2008, the Board issued Pharmacist License No. RPH 61643 to
21 Antonio Pulido (Respondent). The Pharmacist License was in full force and effect at all times
22 relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

23 **JURISDICTION**

24 3. This Accusation is brought before the Board under the authority of the following
25 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 **BUSINESS AND PROFESSIONS CODE STATUTES**

2 4. Section 490 in pertinent part authorizes boards to discipline licensees for criminal
3 convictions:

4 "(a) In addition to any other action that a board is permitted to take
5 against a licensee, a board may suspend or revoke a license on the ground that the
6 licensee has been convicted of a crime, if the crime is substantially related to the
7 qualifications, functions, or duties of the business or profession for which the license
8 was issued.

9 (b) Notwithstanding any other provision of law, a board may exercise any
10 authority to discipline a licensee for conviction of a crime that is independent of the
11 authority granted under subdivision (a) only if the crime is substantially related to the
12 qualifications, functions, or duties of the business or profession for which the
13 licensee's license was issued.

14 (c) A conviction within the meaning of this section means a plea or
15 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
16 a board is permitted to take following the establishment of a conviction may be taken
17 when the time for appeal has elapsed, or the judgment of conviction has been
18 affirmed on appeal, or when an order granting probation is made suspending the
19 imposition of sentence, irrespective of a subsequent order under the provisions of
20 Section 1203.4 of the Penal Code."

21 5. Section 4022 defines dangerous drugs:

22 "‘Dangerous drug’ or ‘dangerous device; means any drug or device
23 unsafe for self-use in humans or animals, and includes the following:

24 (a) Any drug that bears the legend: ‘Caution: federal law prohibits
25 dispensing without prescription,’ ‘Rx only,’ or words of similar import.

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

6. Section 4059 subdivision (a) prohibits the furnishing of dangerous drugs without a
prescription:

"(a) A person may not furnish any dangerous drug, except upon the
prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
dangerous device, except upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

7. Section 4060 prohibits the possession of controlled substances without a prescription:

"No person shall possess any controlled substance, except that furnished

1 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
3 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
4 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
5 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
6 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
7 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
8 shall not apply to the possession of any controlled substance by a manufacturer,
9 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
10 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
11 physician assistant, when in stock in containers correctly labeled with the name and
12 address of the supplier or producer.

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

8. Section 4067 in pertinent part prohibits the dispensing or furnishing of dangerous drugs on the internet in certain circumstances:

"(a) No person or entity shall dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination of a human or animal for whom the prescription is meant if the person or entity either knew or reasonably should have known that the prescription was not issued pursuant to a good faith prior examination of a human or animal, or if the person or entity did not act in accordance with Section 1761 of Title 16 of the California Code of Regulations.

...

(f) For the purposes of this section, 'good faith prior examination' includes the requirements for a physician and surgeon in Section 2242 and the requirements for a veterinarian in Section 2032.1 of Title 16 of the California Code of Regulations."

9. Section 4110 subdivision (a) prohibits conducting a pharmacy without a license:

"(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred."

10. Section 4127.1 in pertinent part prohibits compounding injectable sterile drug products without a license:

"(a) A pharmacy shall not compound injectable sterile drug products in this state unless the pharmacy has obtained a license from the board pursuant to this section. The license shall be renewed annually and is not transferable.

....

"(e) The reconstitution of a sterile powder shall not require a license pursuant to this section if both of the following are met:

1 “(1) The sterile powder was obtained from a manufacturer.

2 “(2) The drug is reconstituted for administration to patients by a
3 health care professional licensed to administer drugs by injection pursuant to this
4 division.”

5 11. Section 4300 subdivision (a) authorizes the Board to suspend or revoke licenses.

6 12. Section 4301 authorizes the Board to discipline licensees for unprofessional conduct
7 and in pertinent part lists certain types of unprofessional conduct:

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

12 ...

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

15 ...

16 (i) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

29 ...

30 (o) Violating or attempting to violate, directly or indirectly, or assisting
31 in or abetting the violation of or conspiring to violate any provision or term of this
32 chapter or of the applicable federal and state laws and regulations governing
33 pharmacy, including regulations established by the board or by any other state or
34 federal regulatory agency."

35 13. Section 4306.5 in pertinent part lists additional examples of unprofessional conduct:

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

38 “(a) Acts or omissions that involve, in whole or in part, the inappropriate
exercise of his or her education, training, or experience as a pharmacist, whether or

1 not the act or omission arises in the course of the practice of pharmacy or the
2 ownership, management, administration, or operation of a pharmacy or other entity
3 licensed by the board.

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

8 HEALTH AND SAFETY CODE STATUTES

9 14. Health and Safety Code section 11056 lists the controlled substances on Schedule III
10 of the California Schedule of Controlled Substances:

11 “(a) The controlled substances listed in this section are included in
12 Schedule III.

13 . . .

14 (f) Anabolic steroids and chorionic gonadotropin. Any material,
15 compound, mixture, or preparation containing chorionic gonadotropin or an anabolic
16 steroid (excluding anabolic steroid products listed in the "Table of Exempt Anabolic
17 Steroid Products" (Section 1308.34 of Title 21 of the Code of Federal Regulations),
18 as exempt from the federal Controlled Substances Act (Section 801 and following of
19 Title 21 of the United States Code)), including, but not limited to, the following:

20

21 (15) Methandrostenolone.

22 (16) Methenolone.

23

24 (30) Testosterone. . . .”

25 15. Health and Safety Code section 11152 provides “No person shall write, issue, fill,
26 compound, or dispense a prescription that does not conform to this division [Division 10, the
27 Uniform Controlled Substances Act].”

28 16. Health and Safety Code section 11377 subdivision (a) prohibits the possession of
certain controlled substances without a prescription:

“Except as authorized by law and as otherwise provided in subdivision
(b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
Division 2 of the Business and Professions Code, every person who possesses any
controlled substance which is (1) classified in Schedule III, IV, or V, and which is not
a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs
(13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision
(f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,
licensed to practice in this state, shall be punished by imprisonment in a county jail
for a period of not more than one year or pursuant to subdivision (h) of Section 1170
of the Penal Code.”

///

1 17. Health and Safety Code section 11379 subdivision (a) in part prohibits the import,
2 selling, or furnishing of certain controlled substances:

3 “Except as otherwise provided in subdivision (b) and in Article 7
4 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and
5 Professions Code, every person who transports, imports into this state, sells,
6 furnishes, administers, or gives away, or offers to transport, import into this state, sell,
7 furnish, administer, or give away, or attempts to import into this state or transport any
8 controlled substance which is (1) classified in Schedule III, IV, or V and which is not
9 a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision
10 (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of
11 subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056,
12 (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5)
13 specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or
14 specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055,
15 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,
16 licensed to practice in this state, shall be punished by imprisonment pursuant to
17 subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four
18 years.”

12 18. Health and Safety Code section 11379.6 subdivision (a), prohibits the unauthorized
13 compounding or preparation of controlled substances:

14 “Except as otherwise provided by law, every person who manufactures,
15 compounds, converts, produces, derives, processes, or prepares, either directly or
16 indirectly by chemical extraction or independently by means of chemical synthesis,
17 any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058
18 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the
19 Penal Code for three, five, or seven years and by a fine not exceeding fifty thousand
20 dollars (\$50,000).”

18 **BOARD OF PHARMACY REGULATIONS**

19 19. California Code of Regulations, title 16, section 1770 provides criteria for when a
20 conviction is substantially related to the practice of pharmacy:

21 “For the purpose of denial, suspension, or revocation of a personal or
22 facility license pursuant to Division 1.5 (commencing with Section 475) of the
23 Business and Professions Code, a crime or act shall be considered substantially
24 related to the qualifications, functions or duties of a licensee or registrant if to a
25 substantial degree it evidences present or potential unfitness of a licensee or registrant
26 to perform the functions authorized by his license or registration in a manner
27 consistent with the public health, safety, or welfare.”

25 **COST RECOVERY**

26 20. Section 125.3 provides that the Board may request the administrative law judge to
27 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
28 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 21. Respondent is subject to disciplinary action under sections 490 (substantially-related
4 conviction) and 4301 subdivision (l) (substantially-related conviction) in conjunction with
5 California Code of Regulations, title 16, section 1770 (criteria for substantially related
6 conviction) on the grounds of unprofessional conduct, because on or about December 20, 2011,
7 Respondent was convicted on one misdemeanor count possession of controlled substances, a
8 crime substantially related to the qualifications, functions or duties of a pharmacist. The
9 circumstances are as follows:

10 a. On or about December 20, 2011, in the criminal proceeding entitled *People v.*
11 *Antonio Pulido* (Super. Ct. Los Angeles County, 2011, No. YA082080), Respondent pled nolo
12 contendere and was convicted of one misdemeanor count of violating Health and Safety Code
13 section Health and Safety Code section 11377 subdivision (a) (possession of a controlled
14 substance). The Court sentenced him to one year's probation.

15 b. The circumstances underlying the conviction are that on or about May 17, 2011, a
16 joint task force of Los Angeles County Sheriff's narcotics officers, United States Postal Service
17 inspectors, and a United States Immigration, Customs, and Enforcement special agent executed a
18 search warrant at Respondent's residence located at 1848 W. 263rd Street, in the City of Lomita,
19 California. The basis for the search warrant was the discovery of a package of human growth
20 hormone shipped by mail from China to the Respondent. Immediately after Respondent accepted
21 delivery of the package of human growth hormone, the task force presented him with the search
22 warrant and searched his house. They found in his bedroom a scale, pill counters, and a hoard of
23 controlled substances: 50 milliliters of methenolone, 10 milliliters of testosterone, 125 vials of
24 hygetropin (human growth hormone), 24.9 grams of testosterone, and 525 capsules of
25 methandrostenolone.

26 After being read and waiving his Miranda rights, Respondent was asked if he knew why the
27 police were there, to which he responded: "I will be totally honest with you, I have been
28 purchasing, making and selling several types of anabolic steroids over the internet." Respondent

1 then gave a written statement in which he admitted that from 2010 to 2011, he repeatedly ordered
2 powders and vials of human growth hormone from China, compounded the powders into
3 injectable liquids and oral capsules, marketed them over the internet to customers in other states,
4 sold them to customers who did not have a prescription for those drugs, arranged for payments to
5 be made to a bank in Thailand, and shipped the compounded drugs over the mail. He later
6 admitted that the compounding was done in his bedroom; admitted to knowing that his ordering,
7 compounding and selling injectable anabolic steroids was illegal; admitted that he had sold his
8 compounded drugs to 10 customers on approximately 40 occasions from November 2010 to May
9 2011; and admitted to administering injectable testosterone for which he did not have a
10 prescription to himself about 30 different times.

11 22. Respondent's deliberate violation of controlled substances laws, his compounding of
12 injectable drugs in his bedroom, and his sale and distribution of these homemade drugs to
13 consumers evidences to a substantial degree his present or potential unfitness to perform the
14 functions authorized by his pharmacist license in a manner consistent with the public health,
15 safety, or welfare

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Furnishing Dangerous Drugs without Prescriptions)**

18 23. Respondent is subject to disciplinary action for unprofessional conduct under section
19 4301 subdivision (o) (unprofessional conduct by violating state or federal laws or regulations
20 governing pharmacy) for violating section 4059 subdivision (a) (furnishing of dangerous drugs
21 without a prescription) by selling homemade dangerous drugs -- including anabolic steroids,
22 methandrostenolone, methenolone, testosterone -- without prescriptions on approximately 40
23 occasions to 10 different consumers from November 2010 to May 2011.

24 24. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
25 cause for discipline.

26 **THIRD CAUSE FOR DISCIPLINE**

27 **(Transportation, Importing and Selling Controlled Substances without Prescriptions)**

28 25. Respondent is subject to disciplinary action for unprofessional conduct under section

1 4301 subdivision (j) (violating state or federal laws or regulations governing controlled
2 substances) for violating Health and Safety Code section 11379 subdivision (a) (prohibiting
3 import, sale, furnishing of Schedule III controlled substances) by importing dangerous drugs from
4 China, compounding and manufacturing them into injectable compounds in his home, marketing
5 them over the internet, and selling them to consumer without valid prescriptions.

6 26. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
7 cause for discipline.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unlicensed Practice of Pharmacy)**

10 27. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301 subdivision (o) (violating state or federal laws or regulations governing pharmacy) for
12 violating section 4110 subdivision (a) (pharmacies must be licensed) by practicing pharmacy at
13 his house, a location not licensed by the Board. By his own admission, from November 2010 to
14 May 2011, Respondent made and compounded dangerous drugs from compounds he obtained
15 illegally from China.

16 28. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
17 cause for discipline.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unlicensed Sterile Compounding)**

20 29. Respondent is subject to disciplinary action for unprofessional conduct under sections
21 4300 and 4301 subdivision (o) (violating state or federal laws or regulations governing pharmacy)
22 by violating section 4127.1 subdivision (a) (compounding without a state license) and Health and
23 Safety Code section 11379.6 subdivision (a) (unauthorized compounding or preparation of
24 controlled substances) by compounding and preparing sterile injectable drugs -- including
25 anabolic steroids, and testosterone, Schedule III controlled substances -- out of his home, a
26 location not licensed by the Board.

27 30. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
28 cause for discipline.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Dispensing Via the Internet)

3 31. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301 subdivision (o) (violating state pharmacy law) for violating section 4067 subdivision (a)
5 (dispensing or furnishing of dangerous drugs on the internet without a valid prescription) in that
6 from November 2010 to May 2011, Respondent sold anabolic steroids through orders obtained
7 through the internet to consumers who he knew lacked valid prescriptions.

8 32. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
9 cause for discipline.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Possession of Controlled Substances without Prescriptions)

12 33. Respondent is subject to disciplinary action for unprofessional conduct under section
13 4301 subdivisions (j) (violating state controlled substances law) and (o) (violating state pharmacy
14 law) for violating sections 4060 (prohibiting possessing controlled substances without a
15 prescription) and Health and Safety Code section 11377 subdivision (a) (same) for possessing
16 anabolic steroids, methandrostenolone, methenolone, and testosterone, Schedule III controlled
17 substances without a valid prescription.

18 34. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
19 cause for discipline.

20 EIGHTH CAUSE FOR DISCIPLINE

21 (Misuse of Education and Failure to Exercise Professional Judgment)

22 35. Respondent is subject to disciplinary action for unprofessional conduct under sections
23 4301 and 4306.5 because from November 2010 to May 2011 Respondent used the education he
24 received in pharmacy school to compound and dispense, furnish, and sell illegal anabolic steroids.
25 In doing so, he failed to exercise or implement his best professional judgment or corresponding
26 responsibility with regard to the dispensing or furnishing of these controlled substances.

27 36. Paragraph 21 and its subparagraphs are realleged and incorporated in full into this
28 cause for discipline.

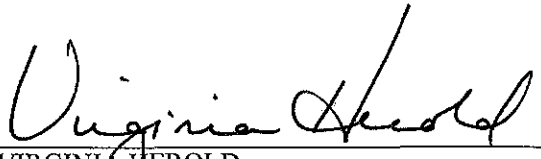
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PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 61643, issued to Antonio Pulido;
2. Ordering Antonio Pulido to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/7/14



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

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