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

10

11 In the Matter of the Accusation Against: Case No. 4743

12 DAVID C. FUNG   ACCUSATION
    1536 Brunswig Lane
13 Emeryville, CA 94608

14 Pharmacist License No. RPH 41674

15   Respondent.

16

17   Complainant alleges:

18   PARTIES

19   1.   Virginia Herold (Complainant) brings this Accusation solely in her official capacity

20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21   2.   On or about April 23, 1988, the Board of Pharmacy issued Pharmacist License

22 Number RPH 41674 to David C. Fung (Respondent). The Pharmacist License was in full force

23 and effect at all times relevant to the charges brought herein and will expire on May 31, 2015,

24 unless renewed.

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
                                                               Accusation

1   4.   Section 4011 of the Code provides that the Board shall administer and enforce both

2   the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances

3   Act [Health & Safety Code, § 11000 et seq.].

4   5.   Section 4300(a) of the Code provides that every license issued by the Board may be

5   suspended or revoked.

6   6.   Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or

7   suspension of a Board-issued license, the placement of a license on a retired status, or the

8   voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to

9   commence or proceed with any investigation of, or action or disciplinary proceeding against, the

10   licensee or to render a decision suspending or revoking the license.

11   STATUTORY AND REGULATORY PROVISIONS

12   7.   Section 4301 of the Code provides, in pertinent part, that the Board shall take action

13   against any holder of a license who is guilty of "unprofessional conduct," defined to include, but

14   not be limited to, any of the following:

15   (l) The conviction of a crime substantially related to the qualifications, functions, and duties

16   of a licensee under this chapter.

17   8.   Section 490 of the Code provides, in pertinent part, that the Board may suspend or

18   revoke a license when it finds that the licensee has been convicted of a crime substantially related

19   to the qualifications, functions or duties of the license.

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

21   "For the purpose of denial, suspension, or revocation of a personal or facility license

22   pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

23   crime or act shall be considered substantially related to the qualifications, functions or duties of a

24   licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

25   licensee or registrant to perform the functions authorized by her license or registration in a manner

26   consistent with the public health, safety, or welfare."

27   / / /

28   / / /

                                           2   Accusation

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about October 10, 2013, in the criminal case *People v. David Chikin Fung*, Case No. 587813-2 in Alameda County Superior Court, Respondent was convicted of violating Penal Code section 245(a)(1) (felony assault with a deadly weapon) and Penal Code section 273.5 (misdemeanor willful infliction of corporal injury). Imposition of sentence was suspended in favor of three years probation, 126 days of jail time, fines and fees and an order that Respondent stay 100 yards from the victim.

a. The circumstances of the conviction are that on or about June 6, 2013, Respondent slapped his wife in the mouth and struck her in the throat. Subsequently, he threatened to kill her and bury her body parts, put a gun to her head, and put the barrel of a shotgun in her mouth. Respondent's wife feared for her life during this ordeal. Respondent also forced his wife to walk to a third floor balcony, and ordered her to jump (she was able to persuade him to let her back inside). Once they were back inside their residence, Respondent ordered his wife to kneel on the ground at knifepoint, while he described how he would decapitate her.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

12. Respondent is subject to discipline under section 4301 of the Code in that, as described in paragraphs 11 and 11.a above, Respondent engaged in unprofessional conduct.
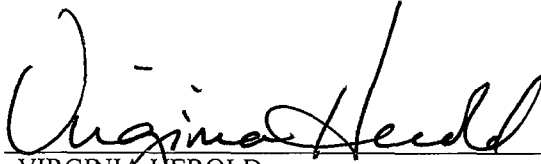
Accusation

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PRAYER

2   WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,

3 and that following the hearing, the Board of Pharmacy issue a decision:

4   1.   Revoking or suspending Pharmacist License Number RPH 41674, issued to David C.

5 Fung;

6   2.   Ordering David C. Fung to pay the Board of Pharmacy the reasonable costs of the

7 investigation and enforcement of this case, pursuant to Business and Professions Code section

8 125.3;

9   3.   Taking such other and further action as deemed necessary and proper.

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12 DATED: 12/16/13

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

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