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

11 In the Matter of the Accusation Against:

Case No. 4873

12 **GEMMEL PHARMACY INC., DBA B & B**
13 **PHARMACY; PHIC LIM; STANLEY**
14 **MARC SCHWARTZ**
10244 Rosecrans Ave.
15 Bellflower, CA 90706

A C C U S A T I O N

16 Pharmacy Permit No. PHY 49825,

17 **PHIC LIM**
1107 Fair Oaks Avenue, #148
18 South Pasadena, CA 91030

19 Pharmacist License No. RPH 49175,

20 and

21 **STANLEY MARC SCHWARTZ**
4656 Adagio Lane
22 Cypress, CA 90630

23 Pharmacist License No. RPH 32928

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about March 23, 2009, the Board issued Pharmacy Permit Number PHY 49825
6 to Gemmel Pharmacy Inc., dba B & B Pharmacy; Phic Lim¹ ; Stanley Marc Schwartz²
7 (Respondent Pharmacy). The Pharmacy Permit expired on March 1, 2012, and has not been
8 renewed.

9 3. On or about October 22, 1996, the Board issued Pharmacist License Number RPH
10 49175 to Phic Lim (Respondent Lim). The Pharmacist License was in full force and effect at all
11 times relevant to the charges brought herein and will expire on December 31, 2015, if not
12 renewed.

13 4. On or about August 9, 1979, the Board issued Pharmacist License Number RPH
14 32928 to Stanley Marc Schwartz (Respondent Schwartz). The Pharmacist License was in full
15 force and effect at all times relevant to the charges brought herein and will expire on June 30,
16 2015, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Board the authority of the following laws. All
19 section references are to the Business and Professions Code ("Code") unless otherwise indicated.

20 6. Section 4300 of the Code states, in pertinent part:

21 "(a) Every license issued may be suspended or revoked."

22 7. Section 4300.1 of the Code states:

23 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
24 operation of law or by order or decision of the board or a court of law, the placement of a license

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26 ¹ Phic Lim was the Secretary from March 23, 2009 to December 23, 2011, and the
Pharmacist-in-Charge from March 23, 2009 to February 28, 2010.

27 ² Stanley Schwarz was the Pharmacist-in-Charge from March 1, 2010 to December 23,
28 2011.

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license."

4 **STATUTORY PROVISIONS**

5 8. Section 4301 of the Code states:

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

9

10 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
11 of Section 11153 of the Health and Safety Code.

12 "(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
13 of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining
14 whether the furnishing of controlled substances is clearly excessive shall include, but not be
15 limited to, the amount of controlled substances furnished, the previous ordering pattern of the
16 customer (including size and frequency of orders), the type and size of the customer, and where
17 and to whom the customer distributes its product.

18

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

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

26 9. Section 4022 of the Code states:

27 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
28 humans or animals, and includes the following:

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

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

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

8 10. Section 4081 of the Code provides:

9 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
10 or dangerous devices shall be at all times during business hours open to inspection by authorized
11 officers of the law, and shall be preserved for at least three years from the date of making. A
12 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-
13 animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
14 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
15 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
16 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
17 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

18 “(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal
19 drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated
20 representative-in charge, for maintaining the records and inventory described in this section.”

21 11. Section 4105 of the Code provides:

22 “(a) All records or other documentation of the acquisition and disposition of dangerous
23 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
24 premises in a readily retrievable form.

25 “(b) The licensee may remove the original records or documentation from the licensed
26 premises on a temporary basis for license-related purposes. However, a duplicate set of those
27 records or other documentation shall be retained on the licensed premises.

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1 **COST RECOVERY PROVISION**

2 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUG CLASSIFICATIONS**

7 15. Dilaudid, brand name for hydromorphone, is a controlled substance as defined under
8 Health and Safety Code section 11055, section (b)(1)(J), and a dangerous drug pursuant to
9 Business and Professions Code section 4022. It is used for the relief of pain.

10 16. Oxycontin, brand name for oxycodone, is a controlled substance as defined under
11 Health and Safety Code section 11055, section (b)(1)(M), and a dangerous drug pursuant to
12 Business and Professions Code section 4022. It is used for the relief of pain.

13 17. Vicodin ES, brand name for hydrocodone/acetaminophen, is a controlled substance
14 as defined under Health and Safety Code section 11056, section (e)(4), and a dangerous drug
15 pursuant to Business and Professions Code section 4022. It is used for the relief of pain.

16 **BOARD INVESTIGATION**

17 18. On or about March 7, 2011, pursuant to a referral from the Department of Health
18 Care Services, Board Inspectors investigated Respondent Pharmacy to gather prescriptions and
19 other data. The investigation revealed that from about July 1, 2009 to about January 6, 2011,
20 Respondent Pharmacy dispensed a total of about 2438 prescriptions for Oxycontin 80mg for a
21 total of about 215,434 dosage units, of which 1503 (or 61.64%) prescription for total dosage units
22 of 133,854 were from Dr. S.S., Dr. H.G. and Physician Assistant A.G. of Compton Pain Center
23 ("CPC") in Compton. One of the common combinations prescribed by these three practitioners
24 was Oxycontin 80mg with Dilaudid 4mg.

25 19. A review of the Controlled Substance Utilization Review ("CURES") data for
26 Respondent Pharmacy reveals the following:

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1 a. Physician Assistant A.G. wrote a total of 6,240 controlled substance prescriptions
2 from July 1, 2009 to January 6, 2011, of which 2,504 (40.13%-largest) were dispensed at
3 Respondent Pharmacy.

4 b. Dr. S.S. wrote a total of 1,037 controlled substance prescriptions from July 1, 2009 to
5 January 6, 2011, of which 269 (25.94%-largest) were dispensed at Respondent Pharmacy.

6 c. Dr. H.G. wrote a total of 1,772 controlled substance prescriptions from July 1, 2009
7 to January 6, 2011, of which 328 (18.51%-largest) were dispensed at Respondent Pharmacy.

8 20. The following are the prescriptions written from CPC and dispensed by Respondent
9 Pharmacy between March 23, 2009 and December 23, 2011:

10 a. Patient HH received Oxycontin 80mg above the recommended dosing interval of
11 twice daily, along with Dilaudid 4mg, 1 tab every 6 hours as needed #100.

12 b. Patient KH received Oxycontin 80mg above the recommended dosing interval of
13 twice daily, along with Dilaudid 4mg, 1 tab every 6 hours as needed #100. KH lived in Los
14 Angeles, traveled approximately 18 miles to CPC, and drove additional miles to Respondent
15 Pharmacy to receive her prescriptions.

16 c. Patient JT received a combination of Oxycontin 80mg and hydromorphone 4mg.
17 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. JT
18 lived in Los Angeles, traveled approximately 18 miles to CPC, and drove additional miles to
19 Respondent Pharmacy to receive her prescriptions. Respondent Pharmacy also dispensed 2
20 prescriptions for Oxycontin 80mg on July 13, 2009.

21 d. Patient JW received a combination of Oxycontin 80mg and hydromorphone 4mg.
22 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. JW
23 lived in Los Angeles, traveled approximately 22 miles to CPC, and drove additional miles to
24 Respondent Pharmacy to receive his prescriptions. JW paid cash for these drugs when they were
25 not covered by insurance.

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1 e. Patient DU received a combination of Oxycontin 80mg and hydromorphone 4mg.
2 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. DU
3 lived in Los Angeles, traveled approximately 23 miles to CPC, and drove additional miles to
4 Respondent Pharmacy to receive his prescriptions.

5 f. Patient AS received a combination of Oxycontin 80mg and hydromorphone 4mg.
6 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. AS
7 lived in Los Angeles, traveled approximately 12 miles to CPC, and drove additional miles to
8 Respondent Pharmacy to receive his prescriptions.

9 g. Patient JJ received a combination of Oxycontin 80mg and hydromorphone 4mg.
10 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. JJ
11 lived in Los Angeles, traveled approximately 18 miles to CPC, and drove additional miles to
12 Respondent Pharmacy to receive his prescriptions.

13 h. Patient FJ received a combination of Oxycontin 80mg and hydromorphone 4mg.
14 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. FJ
15 lived in Los Angeles, traveled approximately 10 miles to CPC, and drove additional miles to
16 Respondent Pharmacy to receive his prescriptions.

17 i. Patient MC received a combination of Oxycontin 80mg and hydromorphone 4mg.
18 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. MC
19 lived in Los Angeles, traveled approximately 16 miles to CPC, and drove additional miles to
20 Respondent Pharmacy to receive his prescriptions. Respondent Pharmacy's printed CURES
21 report for MC shows that on June 16, 2010, July 14, 2010 and August 13, 2010, MC used
22 multiple physicians and pharmacies to obtain his pain medications. MC also paid cash for his
23 pain medications when they were not covered by his insurance.

24 j. Patient LM received a combination of Oxycontin 80mg and hydromorphone 4mg.
25 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100. LM
26 lived in Long Beach, traveled approximately 3 miles to CPC, and drove additional miles to
27 Respondent Pharmacy to receive his prescriptions.

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1 k. Patient EA received hydrocodone/acetaminophen 7.5/750mg, above the
2 recommended dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed
3 4500mg/day to EA who lived in Moreno Valley, traveled approximately 50 miles to visit his
4 physician, and drove additional miles to Respondent Pharmacy to receive his prescriptions.

5 l. Patient RA received hydrocodone/acetaminophen 7.5/750mg, above the
6 recommended dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed 3000-
7 4500 mg/day to RA.

8 m. Patient KB received hydrocodone/acetaminophen 7.5/750mg, above the
9 recommended dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed 3000-
10 4500mg/day to KB. KB lived in Highland, traveled approximately 6 miles to visit his physician
11 in San Bernardino, and drove an additional 67 miles to Respondent Pharmacy to receive his
12 prescriptions.

13 n. Patient JH received hydrocodone/acetaminophen 7.5/750mg, above the recommended
14 dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed 3000-4500mg/day to
15 JH. JH lived in Pomona, traveled approximately 40 miles to visit his physician in Beverly Hills,
16 and drove additional miles to Respondent Pharmacy to receive his prescriptions.

17 o. Patient BH received hydrocodone/acetaminophen 7.5/750mg, 4500mg/day above the
18 recommended dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed
19 4500mg/day to BH.

20 p. Patient NM received hydrocodone/acetaminophen 7.5/750mg, above the
21 recommended dose of 4000mg/day of acetaminophen. Respondent Pharmacy dispensed 3000-
22 4500mg/day to NM. NM lived in Anaheim, traveled approximately 17 miles to visit her physician
23 in Pico Rivera, and drove additional miles to Respondent Pharmacy to receive her prescriptions.

24 q. Patient KA received a combination of Oxycontin 80mg and hydromorphone 4mg.
25 Oxycontin 80mg – 2 tabs am, 1 pm #90; Dilaudid 4mg, 1 tab every 6 hours as needed #100.

26 r. Patient EM received Oxycontin 80mg above the recommended dosing interval of
27 twice daily. EM was also prescribed Dilaudid 4mg, 1 tab every 6 hours as needed #90. EM lived
28 in Los Angeles, traveled approximately 18 miles CPC, and drove additional miles to Respondent

1 Pharmacy to receive his prescriptions. Respondent Pharmacy's printed Controlled Substance
2 Utilization Review ("CURES") report for EM shows that on June 9, 2010, EM used multiple
3 physicians to obtain his pain medications.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Failure to Assume Co-Responsibility to Validate Legitimacy of Prescription)**

6 21. Respondents Pharmacy, Lim and Schwartz are subject to disciplinary action under
7 Code section 4301, subdivisions (d) and (j) for violating Health and Safety Code section 11153,
8 subdivision (a), and Code section 4301, subdivision (o), for violating Regulations sections 1761,
9 in that between March 23, 2009 to December 23, 2011, Respondents failed to assume
10 corresponding responsibility by failing to validate the legitimacy of the prescriptions and/or
11 reviewing the patients' drug therapy, by dispensing prescriptions to physician shoppers, and/or by
12 dispensing erroneous/uncertain prescriptions. Complainant refers to and incorporates all the
13 allegations contained in paragraphs 18-20, as though set forth fully.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Records)**

16 22. Respondents Pharmacy and Lim are subject to disciplinary action under Code section
17 4301, subdivision (o) for violating Code sections 4081 and 4105, in that during the Board
18 investigation on March 7, 2011, Respondents could not produce prescription hardcopies for RX
19 ## 1574617, 1578157, 1556336, 1578979, 1558050, 1558030, 1560968 and 1562161 for the
20 period between March 23, 2009 and February 28, 2010.

21 **DISCIPLINE CONSIDERATIONS**

22 23. To determine the degree of discipline, if any, to be imposed on Respondent Lim,
23 Complainant alleges that on or about April 27, 2011, the Board of Pharmacy issued Citation
24 Number CI 2010 48039 to Respondent Lim for violations of Regulations section 1751.3,
25 subdivision (b), 1751.7, subdivision (a), and 1716.2. Respondent Lim was ordered to pay a fine
26 of \$1,500.00. That Citation is now final and is incorporated by reference as if fully set forth.

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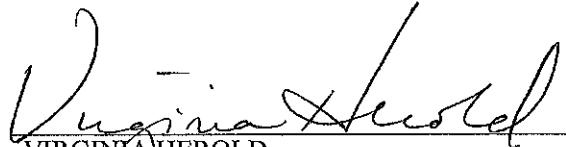
PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 49825, issued to Gemmel Pharmacy Inc., dba B & B Pharmacy; Phic Lim; Stanley Marc Schwartz;
2. Revoking or suspending Pharmacist License Number RPH 49175, issued to Phic Lim;
3. Revoking or suspending Pharmacist License Number RPH 32928, issued to Stanley Marc Schwartz;
4. Ordering Gemmel Pharmacy Inc., dba B & B Pharmacy, Phic Lim and Stanley Marc Schwartz to jointly and severally 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;
5. Taking such other and further action as deemed necessary and proper.

DATED: _____

4/5/14



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

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