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1	Kamala D. Harris		
2	Attorney General of California LINDA L. SUN		
3	Supervising Deputy Attorney General MICHAEL BROWN		
4	Deputy Attorney General State Bar No. 231237		
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-2095 Facsimile: (213) 897-2804		
7	E-mail: MichaelB.Brown@doj.ca.gov Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. 5044		
12	ESTHER KIM		
13	P.O. Box 3162 Big Bear City, CA 92314 A C C U S A T I O N		
14	Pharmacist License No. RPH 66753		
15	Respondent.		
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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 January 9, 2012, the Board of Pharmacy issued Pharmacist License		
22	Number RPH 66753 to Esther Kim (Respondent). The Pharmacist License was in full force and		
23	effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless		
24	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 unless otherwise indicated.		
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1	4. Section 118, subdivision (b), of the Code provides that the			
2	suspension/expiration/surrender/cancellation of a license shall not deprive the			
3	Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period			
4	within which the license may be renewed, restored, reissued or reinstated.			
5	5. Section 4011 of the Code provides that the Board shall administer and enforce both			
6	the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances			
7	Act [Health & Safety Code, § 11000 et seq.].			
8	6. Section 4300(a) of the Code states that every license issued by the Board may be			
9	suspended or revoked.			
10	7. Section 4300.1 of the Code states:			
11	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by			
12	operation of law or by order or decision of the board or a court of law, the placement of a license			
13	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board			
14	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary			
15	proceeding against, the licensee or to render a decision suspending or revoking the license."			
16	STATUTORY PROVISIONS			
17	8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any			
18	dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,			
19	veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any			
20	dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,			
21	veterinarian, or naturopathic doctor pursuant to Section 3640.7.			
22	9. Section 4060 of the Code states:			
23	"No person shall possess any controlled substance, except that furnished to a person upon			
24	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic docto			
25	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified			
26	nurse-midwife pursuant to Section 2746.51; a nurse practitioner pursuant to Section 2836.1, or a			
27	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5			
28	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of			
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1	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not		
2	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,		
3	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified		
4	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly		
5	labeled with the name and address of the supplier or producer.		
6	"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a		
7	physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and		
8	devices."		
9	10. Section 4301 of the Code states:		
10	"The board shall take action against any holder of a license who is guilty of unprofessional		
11	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.		
12	Unprofessional conduct shall include, but is not limited to, any of the following:		
13			
14	"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or		
15	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and		
16	whether the act is a felony or misdemeanor or not.		
17			
18	"(j) The violation of any of the statutes of this state, or any other state, or of the United		
19	States regulating controlled substances and dangerous drugs.		
20			
21	"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the		
22	violation of or conspiring to violate any provision or term of this chapter or of the applicable		
23	federal and state laws and regulations governing pharmacy, including regulations established by		
24	the board or by any other state or federal regulatory agency."		
25	HEALTH AND SAFETY CODE SECTIONS		
26	11. Health and Safety Code section 11150, subdivision (a), states:		
27	"Except as otherwise provided in this division, every person who possesses (1) any		
28	controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of		
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1	Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or	
2	specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section	
3	11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic	
4	drug, unless upon the written prescription of a physician, densist, podiatrist, or veterinarian	
5	licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of	
6	Section 1170 of the Penal Code."	
7	12. Health and Safety Code section 11173, subdivision (a), states:	
8	"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt	
9	to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,	
10	misrepresentation, or subterfuge; or (2) by the concealment of a material fact."	
11	COST RECOVERY	
12	13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the	
13	administrative law judge to direct a licentiate found to have committed a violation or violations of	
14	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and	
15	enforcement of the case, with failure of the licentiate to comply subjecting the license to not being	
16	renewed or reinstated.	
17	CONTROLLED SUBSTANCES / DANGEROUS DRUGS	
18	14. Section 4021 of the Code states:	
19	"Controlled substance' means any substance listed in Chapter 2 (commencing with Section	
20	11053) of Division 10 of the Health and Safety Code."	
21	15. Section 4022 of the Code states, in pertinent part:	
22	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use,	
23	except veterinary drugs that are labeled as such, and includes the following:	
24	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without	
25	prescription,' 'Rx only,' or words of similar import.	
26		
27	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on	
28	prescription or furnished pursuant to Section 4006."	
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1 16. Ambien, a brand name for Zolpidem 10 mg, is used for treating insomnia, is a
 2 Schedule IV controlled substance as designated by Health and Safety Code section 11057,
 3 subdivision (d)(32). It is categorized as a dangerous drug pursuant to Business and Professions
 4 Code section 4022.

5 17. Cozzar, a brand name of Losartan, is used for treating hypertension. It is categorized
6 as a dangerous drug pursuant to section 4022 of the Code.

7 18. Cymbalta, a brand name of Duloxetine 60mg, is used for treating depression. It is
8 categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

9 19. Neurontin, a brand name for Gabapentin 800mg, is an anticonvulsant that is used for
10 preventing seizures and reducing pain-related responses. It is categorized as a dangerous drug
11 pursuant to section 4022 of the Code.

12 20. Ionamin/Adipex-P, a brand name for Phentermine 37.5mg, a class of drug called
13 anorectics, is used for treating obesity, is a Scheduled IV controlled substance as designated by
14 Health and Safety Code section 11057, subdivision (f)(4). It is categorized as a dangerous drug
15 pursuant to section 4022 of the Code.

16 21. Valtrex, a brand name for Valacyclovir 1gm, an antiviral used in patients with
17 normal immune systems to treat herpes zoster infections (shingles) or to treat or suppress genital
18 herpes or cold sores (herpes simplex) or other conditions as directed by a physician. It is
19 categorized as a dangerous drug pursuant to section 4022 of the Code.

20 22. Vestura, a brand name of Drospirenone/Ethinyl Estradiol, is used for birth control. It
21 is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.
22 23. Xanax, a brand name for Alprazolam 1mg, is an anti-anxiety benzodiazepin and is a
23 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1).

It is categorized as a dangerous drug pursuant to section 4022(c) of the Code.

24 25

FIRST CAUSE FOR DISCIPLINE

26 27 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)
24. Respondent is subject to disciplinary action under sections 4300 and 4301,

28 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts

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1	involving moral turpitude, dishonesty, fraud, deceit, or corruption with the intent to substantially	
2	benefit herself, or substantially injure another, as follows:	
3	a. On or about October 24, 2012, during an investigation by Loss Prevention officers at	
4	Walgreens Pharmacy in Big Bear Lake, Respondent admitted that between December 2011 to	
5	October 22, 2012, she stole controlled substances and dangerous drugs:	
6	a) 900 tablets of Phentermine 37.5mg;	
7	b) 60 tablets of Alprazolam1mg;	
8	c) 150 tablets of Zolpidem 10mg;	
9	d) 280 tablets of Vestura;	
10	e) 360 tablets of Gabapentin 800mg;	
11	f) 200 tablets of Losartan 50mg;	
12	g) 300 tablets of Cymbalta 60mg; and	
13	h) 200 tablets of Valacyclovir 1gm.	
14	SECOND CAUSE FOR DISCIPLINE	
15	(Obtain/Procure Administration/Prescription of Controlled Substances by Fraud, Deceit, Misrepresentation, Subterfuge, and/or Concealment of Material Fact)	
16	25 Description (i) and	
17	25. Respondent is subject to disciplinary action under sections 4301, subdivision (j) and	
18	Heath and Safety Code section 11173, subdivision (a), on the grounds of unprofessional conduct, in that between December 2011 to October 22, 2012, Respondent stole controlled substances and	
19		
20	dangerous drugs. Complainant refers to, and by this reference incorporates, the allegations set	
21	forth above in paragraph 24, subparagraph (a), as though set forth fully.	
22	<u>THIRD CAUSE FOR DISCIPLINE</u>	
23	(Unprofessional Conduct/ Violation of Licensing Chapter) 26. Respondent is subject to disciplinary action under section 4301, subdivision (j) and	
24	26. Respondent is subject to disciplinary action under section 4301, subdivision (j) and (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of	
25	the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations	
- 26	set forth above in paragraph 24, subparagraph (a) and 25, as though set forth fully.	
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1	FOURTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct-Unlawful Possession of a Controlled Substance)
3	27. Respondent subject to disciplinary action for unprofessional conduct under Code
4	section 4301, subdivision (j), in violation of section 4060, in that Respondent stole 900 tablets of
5	Phentermine 37.5mg, 60 tablets of Alprazolam 1mg, 150 tablets of Zolpidem 10mg, from the
6	pharmacy while working as a pharmacist at Walgreens Pharmacy. Complainant refers to, and by
7	this reference incorporates, the allegations set forth above in paragraph 24, subparagraph (a) and
8	25, as though set forth fully
9	FIFTH CAUSE FOR DISCIPLINE
10	(Unprofessional Conduct-Unlawful Possession of a Dangerous Drug)
11	28. Respondent s subject to disciplinary action for unprofessional conduct under Code
12	section 4301, subdivision (j), in that Respondent stole 280 tablets of Vestura, 360 tablets of
13	Gabapentin 800mg, 200 tablets of Losartan 50mg, 300 tablets of Cymbalta 60mg and 200 tablets
14	of Valacyclovir 1gm from the pharmacy while working as a pharmacist at Walgreens Pharmacy.
15	Complainant refers to, and by this reference incorporates, the allegations set forth above in
16	paragraph 24, subparagraph (a) and 25, as though set forth fully.
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PRAYER 1 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 2 and that following the hearing, the Board of Pharmacy issue a decision: 3 1. Revoking or suspending Pharmacist License Number RPH 66753, issued to Esther 4 Kim; 5 2. Ordering Esther Kim to pay the Board of Pharmacy the reasonable costs of the 6 investigation and enforcement of this case, pursuant to Business and Professions Code section 7 125.3; and 8 3. Taking such other and further action as deemed necessary and proper. 9 10 11 12/14 12 DATED: 13 VIRGI Executive Officer 14 Board of Pharmacy Department of Consumer Affairs 15 State of California Complainant 16 17 LA2013510850 51475986_2.doc 18 19 20 21 22 23 24 25 26 27 28 8 Accusation