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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. 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.

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 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.



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

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, dentist, 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.”



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 Alprazolam 1mg;

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,  
16 Misrepresentation, Subterfuge, and/or Concealment of Material Fact)**

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,  
19 in that between December 2011 to October 22, 2012, Respondent stole controlled substances and  
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 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

24 26. Respondent is subject to disciplinary action under section 4301, subdivision (j) and  
25 (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of  
26 the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations  
27 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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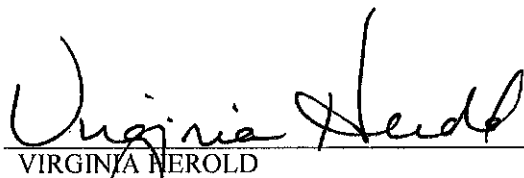
**PRAYER**

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 Pharmacist License Number RPH 66753, issued to Esther Kim;
2. Ordering Esther Kim to 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

8/12/14



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

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