

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5079

12 **JOSEPH PAUL MACALUSO**
13 **1249 Columbus Way**
14 **Vista, CA 92081**

ACCUSATION

15 **Pharmacist License No. RPH 25224**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 8, 1967, the Board of Pharmacy issued Pharmacist License
23 Number RPH 25224 to Joseph Paul Macaluso (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on November
25 30, 2014, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300 of the Code states in pertinent part:

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

11 (b) The board shall discipline the holder of any license issued by the board,
12 whose default has been entered or whose case has been heard by the board and found
guilty, by any of the following methods:

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

15 (3) Suspending his or her right to practice for a period not exceeding one
16 year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

19

20 6. Section 4300.1 of the Code states:

21 The expiration, cancellation, forfeiture, or suspension of a board-issued
22 license by operation of law or by order or decision of the board or a court of law,
23 the placement of a license on a retired status, or the voluntary surrender of a license
24 by a licensee shall not deprive the board of jurisdiction to commence or proceed
with any investigation of, or action or disciplinary proceeding against, the licensee
or to render a decision suspending or revoking the license.

25
26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. Section 4113 of the Code states:

....

(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

12. Section 4301 of the Code states:

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

....

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

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

....

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

REGULATORY PROVISIONS

13. Title 16, California Code of Regulations, Section 1707.1 provides:

(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

1
2 2. The prescriber's name and where appropriate, license number, DEA
registration number or other unique identifier;

3 3. The date on which a drug was dispensed or refilled;

4 4. The prescription number for each prescription; and

5 5. The information required by section 1717.

6 (C) Any of the following which may relate to drug therapy: patient
7 allergies, idiosyncracies, current medications and relevant prior medications including
nonprescription medications and relevant devices, or medical conditions which are
8 communicated by the patient or the patient's agent.

9 (D) Any other information which the pharmacist, in his or her professional
judgment, deems appropriate.

10 (2) The patient medication record shall be maintained for at least one year
11 from the date when the last prescription was filled.

12 **COST RECOVERY**

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

17 **DRUG**

18 15. Norco, a brand name for hydrocodone with acetaminophen, is a dangerous drug
19 pursuant to section 4022, and a Schedule IV controlled substance as designated by Health and
20 Safety Code section 11056(e)(5).

21 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

22 16. Respondent was employed by North County Health Services Pharmacy (Pharmacy) as
23 Director of Pharmacy from August 1, 2007 until he was terminated on November 7, 2012. He
24 was the Pharmacist in Charge from November 26, 2007 until his termination.

25 17. The Pharmacy's internal policies provide that the Pharmacy may only dispense
26 medicines in their formulary. The Pharmacy only accepts prescriptions written by North County
27 Health Services clinicians for North County Health Services patients. However, North County
28

1 Health Services employees and their families may fill prescriptions at a discounted rate, but the
2 prescription must be written by or cosigned by a North County Health Services clinician.

3 18. A complaint was filed by a Pharmacist colleague at the Pharmacy, which led to an
4 investigation against Respondent regarding his prescribing practices with respect to filling his own
5 or his family's prescriptions.

6 19. Respondent admitted to filling some prescriptions in his name and then changing the
7 name of the prescription to a fictitious name. When the investigation into this practice started,
8 Respondent changed the fictitious names for his prescriptions into another fictitious name.

9 20. Respondent admitted to processing prescriptions through the pharmacy computer
10 system and printing medication bottle labels for himself and his wife, then voiding the reprinted
11 labels in the computer records to maintain the current inventory. Some of these labels were for
12 medications for Respondent's wife prescribed by a doctor on a date that that doctor was no longer
13 working at North County Health Services.

14 21. Respondent admitted to ordering Norco in a dosage not normally carried by the
15 pharmacy (non-formulary), checking the drug into the pharmacy inventory, then maintaining the
16 bottle in a secret drawer to which only he had the key. Respondent claimed that his doctor was
17 going to prescribe Norco to him, so he went ahead and filled the prescription, but that his doctor
18 ultimately did not write the prescription. Respondent alleged that he intended to return the
19 medication to a reverse distributor. Respondent reported that at the time of his termination there
20 was a full, large, unopened bottle of Norco in his "secret drawer." However, only two empty
21 bottles of Norco were found in Respondent's drawer.

22 22. Several prescriptions were filled at the pharmacy for Respondent, his wife, and his
23 daughter with no corresponding documentation from a physician to support those prescriptions.

24 23. Despite the fact that he filled prescriptions at the pharmacy, there was no profile in
25 Respondent's name at the pharmacy. Respondent changed his name in the North County Health
26 Services computer software to two pseudonyms, Dee Wyse and Mike Schrek. Respondent
27 admitted to changing the name in the computer system to Mike Schrek so he could fill
28

1 prescriptions at work for a discount while maintaining his privacy. The pharmacy profile for Dee
2 Wyse had the same address, social security number, and date of birth as Respondent.

3 24. Prescriptions for Respondent were altered to the name Dee Wyse. Those
4 prescriptions also erroneously listed the prescribing doctor's place of employment as North
5 County Health Services.

6 25. A few prescriptions for Respondent and his wife were allegedly prescribed by the
7 Chief Medical Officer of North County Health Services, with his signature. However, the Chief
8 Medical Officer denied prescribing any medication to Respondent, Respondent's wife, or any of
9 Respondent's pseudonyms and the signatures did not belong to him. Some of these prescriptions
10 were generated by other medical facilities, not North County Health Services.

11 26. Several of the prescriptions forged with the name of the Chief Medical Officer were
12 associated with the prescription file for Dee Wyse, one of Respondent's pseudonyms.

13 27. Several of the prescriptions filled for Dee Wyse had no hard copy prescriptions
14 associated with them or had been voided.

15 28. Several of the filled prescriptions had the wrong prescription number for the type of
16 drug distributed. Respondent would assign non-controlled prescription numbers to prescriptions
17 that were controlled substances.

18 29. A colleague questioned a refill for Respondent's wife, that was dated for one year
19 from the fill date, the type of medication did not match the pharmacy records, and there was no
20 authorization for the medication.

21 30. Respondent verified/ initialed two prescriptions filled for this wife on a nonprescription
22 form with a doctor's signature who denied writing the prescriptions or any prescriptions for
23 Respondent's wife.

24 31. Respondent verified another prescription for his wife on a prescription that was
25 written on a North County Health Services prescription pad (they were available at the pharmacy)
26 and fraudulently signed by a North County Health Services Pharmacy clinician. Respondent's wife
27 never saw that doctor and was not a North County Health Services patient. The doctor did not
28 sign the prescription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Failure to Maintain Medication Profiles)

32. Respondent is subject to disciplinary action under section 4301, subdivision (o) for violation of California Code of Regulations, title 16, section 1707.1 in that, although he filled prescriptions for himself at work, Respondent failed to maintain a Medication Profile on himself, as set forth in paragraphs 15 to 30, which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Making False and Fraudulent Prescription Records)

33. Respondent is subject to disciplinary action for unprofessional Conduct under section 4301, subdivision (g), for knowingly making a document that falsely represents the existence or nonexistence of a set of facts, in that Respondent altered his patient medication record by changing his name to the alias “Mike Schrek” and filled prescriptions for himself under that pseudonym as well as the pseudonym “Dee Wyse,” as set forth in paragraphs 15 to 30, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Furnished a Dangerous Drug Without a Lawful Prescription)

34. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code for unprofessional conduct in that Respondent knowingly violated Business and Professions Code section 4059, subdivision (a), when he dispensed a dangerous drug to his wife without a valid prescription, based upon a fraudulent signature on a document that was not a prescription pad, and without the verbal or written authorization of a lawfully prescriber, as described in paragraphs 15 to 30, which are incorporated herein by reference.

PRAYER

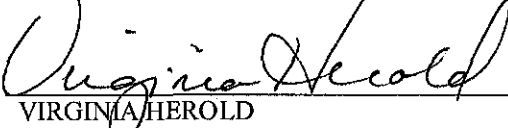
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 25224, issued to Joseph Paul Macaluso;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Ordering Joseph Paul Macaluso 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;

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

DATED: 9/14/14 

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

SD2014706586
70861460.doc