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7

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

11 In the Matter of the Accusation Against:

Case Nos. 4998 and 5106

12 **KERR'S PHARMACY,**
12142 Santa Monica Blvd.
13 Los Angeles, CA 90025
HARRY PETERS, Pharmacist-In-Charge

A C C U S A T I O N

14 Original Permit No. PHY 35423,

15 **HARRY PETERS**
16 12142 Santa Monica Blvd
Los Angeles, CA 90025

17 Original Pharmacist License No. RPH 28331,

18 **and**

19 **JOHN WILLIAM SHAFER**
20 151 Ventura Way
Chatsworth, CA 91311

21 Original Pharmacist License No. RPH 36106

22 Respondents.

23
24
25 Complainant alleges:

26 **PARTIES**

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

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 by
4 or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
5 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 9. Section 4036.5 states: "Pharmacist-in-charge" means a pharmacist proposed by a
9 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
10 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of
11 pharmacy."

12 10. Section 4059, subdivision (a), states:

13 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
14 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
15 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
16 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

17 11. Section 4060 states, in pertinent part:

18 "A person shall not possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
22 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
24 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
25 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
26 midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with
27 the name and address of the supplier or producer."

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1 12. Section 4113, subdivision (c), states: "The pharmacist-in-charge shall be responsible
2 for a pharmacy's compliance with all state and federal laws and regulations pertaining to the
3 practice of pharmacy."

4 13. Section 4301 states: "The board shall take action against any holder of a license who is
5 guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation
6 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
7 following:

8

9 "(b) Incompetence.

10 "(c) Gross negligence.

11

12 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
13 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
14 whether the act is a felony or misdemeanor or not.

15

16 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
17 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an
18 addict.

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

21

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 the
25 board or by any other state or federal regulatory agency."

26 14. Section 4342, subdivision (a), states:

27 "The board may institute any action or actions as may be provided by law and that, in its
28 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not

1 conform to the standard and tests as to quality and strength, provided in the latest edition of the
2 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
3 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875 of Division
4 104 of the Health and Safety Code).”

5 15. Health and Safety Code section 11170 states: “No person shall prescribe, administer,
6 or furnish a controlled substance for himself.”

7 16. Health and Safety Code section 11217 states, in pertinent part:

8 “Except as provided in Section 11223, no person shall treat an addict for addiction to a
9 narcotic drug except in one of the following:

10 “(a) An institution approved by the State Department of Health Care Services, and where
11 the patient is at all times kept under restraint and control.

12 “(b) A city or county jail.

13 “(c) A state prison.

14 “(d) A facility designated by a county and approved by the State Department of Health Care
15 Services pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions
16 Code.

17 “(e) A state hospital.

18 “(f) A county hospital.

19 “(g) A facility licensed by the State Department of Health Care Services pursuant to Division
20 10.5 (commencing with Section 11750).

21 “(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.”

22 17. Health and Safety Code section 11350, subdivision (a), states:

23 “Except as otherwise provided in this division, every person who possesses (1) any
24 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
25 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
26 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
27 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
28 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to

1 practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
2 1170 of the Penal Code.”

3 18. Health and Safety Code section 11550, subdivision (a), states, in pertinent part:

4 “No person shall use, or be under the influence of any controlled substance which is (1)
5 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
6 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
7 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or
8 in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule
9 III, IV, or V, except when administered by or under the direction of a person licensed by the state
10 to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to
11 show that it comes within the exception.”

12 REGULATORY PROVISIONS

13 19. California Code of Regulations, title 16, section 1709.1, subdivision (a), states: “The
14 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility
15 for the daily operation of the pharmacy.”

16 20. California Code of Regulations, title 16, section 1714 states, in pertinent part:

17 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
18 equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The
19 pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of
20 pharmacy.

21 “(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly
22 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly
23 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for
24 pharmaceutical purposes.

25 “(d) Each pharmacist while on duty shall be responsible for the security of the prescription
26 department, including provisions for effective control against theft or diversion of dangerous drugs
27 and devices, and records for such drugs and devices. Possession of a key to the pharmacy where
28 dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 23. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (f),
4 for unprofessional conduct, in that Respondent Shafer admittedly took controlled substances from
5 Respondent Pharmacy without a prescription. The circumstances are as follows:

6 a. On or about April 30, 2013, officers from the Ventura County Sheriff's Department
7 searched the home of Respondent Shafer. Officers found a large supply of prescription medication
8 during their search and some of the controlled substances featured labels from Respondent
9 Pharmacy. Examples of controlled substances found at Respondent Shafer's home include:
10 Fentanyl Patches, Meprobamate, Hydrocodone/APAP, Desoxyn, Preludin, Qualude, Tylenol with
11 Codeine, Diethylprodin, Phenobarbital, Temazepam, Zolpidem, Flurazepam, Propoxyphene/APAP,
12 Alprazolam, Chloral Hydrate, Lorazepam, Tranxene and Marijuana. Examples of non controlled
13 dangerous drugs found were: Lisinopril, Cimetidine, Naltrexone and Levoxyl.

14 b. During an interview with Ventura County Sheriff's Department officers, Respondent
15 Shafer stated that, while he was working at Respondent Pharmacy, he became friendly with A.S.,
16 the care taker of a terminal cancer patient. Respondent Shafer stated that he suspected that A.S.
17 was using illegal drugs and after discussing A.S.' use of controlled substances, Respondent Shafer
18 offered to let her stay at his home and help her detox from heroin. While A.S. was staying at his
19 home, Respondent Shafer provided her with controlled substances he had stored in his home to
20 allegedly assist her detoxification.

21 c. During the interview with Ventura County Sheriff's Department officers, Respondent
22 Shafer admitted that he took hydrocodone pills from Respondent Pharmacy to keep at his home
23 for his own consumption. Respondent Shafer stated that he took the hydrocodone recreationally
24 and analogized it to drinking beer.

25 d. On or about May 13, 2013, during an interview with a Board inspector, Respondent
26 Shafer admitted that he had taken some expired zolpidem 10mg tablets and a dozen ibuprofen 600
27 mg tablets from Respondent Pharmacy.

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1 authorized treatment facility. The conduct is described in additional detail in paragraph 23,
2 subparagraphs (a) and (b), which is hereby incorporated by reference as though set forth fully.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Diversion of Controlled Substances from Respondent Pharmacy by Employee)**

5 28. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
6 section 4113, subdivision (c), and California Code of Regulations, title 16, section 1709.1,
7 subdivision (a), for the possession and diversion of controlled substances from Respondent
8 Pharmacy by employee Respondent Shafer in violation of section 4301, subdivisions (j) and (o), in
9 conjunction with section 4060 and Health and Safety Code section 11350, subdivision (a). The
10 circumstances are as follows:

11 a. On or about May 13, 2013, an inspector for the Board interviewed Respondent Peters.
12 Respondent Peters stated that Respondent Shafer has worked for him since the 1980's, that he
13 knew Respondent Shafer used marijuana and that Respondent Shafer also used other prescription
14 drugs. Respondent Peters further admitted that he knew Respondent Shafer kept large quantities
15 of controlled substances at his home and described Respondent Shafer as a "hoarder."

16 b. The conduct is described in additional detail in paragraph 23, subparagraphs (a)
17 through (d) inclusive, which is hereby incorporated by reference as though set forth fully.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Inventory Controlled Substances)**

20 29. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
21 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated Code
22 of Federal Regulations, title 21, section 1304.11, by failing to inventory all controlled substances in
23 stock at least every two years as required by the Drug Enforcement Administration ("DEA")
24 Controlled Substances Inventory. The circumstances are as follows:

25 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an
26 inspector for the Board asked Respondent Peters for the pharmacy's bi-annual inventory.
27 Respondent Peters gave the Board inspector an inventory dated May 1, 2013, but admitted that
28 the inventory was incomplete.

- 1 e. Over one thousand unaccounted for tablets of Oxycodone/APAP 10/325.
- 2 f. Five unaccounted for 75 mcg Fentanyl patches.
- 3 g. Nine unaccounted for tablets of Flurazepam 30 mg.
- 4 h. Over five hundred unaccounted for tablets of Hydrocodone/APAP 10/325.
- 5 i. Over two hundred unaccounted for tablets of Hydrocodone/APAP 7.5/325.
- 6 j. Over three hundred unaccounted for tablets of Hydrocodone/APAP 5/325.
- 7 k. Over one hundred unaccounted for tablets of Hydrocodone/APAP 7.5/750.
- 8 l. Over four hundred unaccounted for tablets of Hydrocodone/APAP 5/500.
- 9 m. Over two hundred unaccounted for tablets of Methylphenidate ER 10 mg.
- 10 n. Over one hundred unaccounted for tablets of Methylphenidate 10 mg.
- 11 o. Over four hundred unaccounted for of Methylphenidate 20 mg.
- 12 p. Two unaccounted for tablets of Methylphenidate ER 36mg.
- 13 q. Over fifty unaccounted for tablets of Oxycodone/APAP 7.5/325.
- 14 r. Over five hundred unaccounted for tablets of Temazepam 15 mg.
- 15 s. Over one thousand unaccounted for tablets of Temazepam 30 mg.
- 16 t. Over one hundred unaccounted for tablets of Zolpidem 5 mg.
- 17 u. Over one thousand unaccounted for tablets of Zolpidem 10 mg.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)**

20 32. Respondent Peters is subject to disciplinary action under section 4301, subdivision (o),
21 in that Respondent Peters violated California Code of Regulations, title 16, section 1714,
22 subdivision (d), for failing to maintain the security and safety of dangerous drugs while on duty at
23 Respondent Pharmacy. Following the Board's May 13, 2013, inspection and review of
24 Respondent Pharmacy's bi-annual DEA inventory, purchase orders, disposition records, and drugs
25 on the pharmacy shelves, the Board identified dangerous drug variances numbering in the
26 thousands. The conduct and specific variances are detailed in paragraph 31, subparagraphs (a)
27 through (u) inclusive, which is hereby incorporated by reference as though set forth fully.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Incompetence and/or Gross Negligence)**

3 33. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
4 section 4301, subdivisions (b) and/or (c), in that Respondent Pharmacy and Respondent Peters'
5 failure to identify and record the number of dangerous drugs stored at Respondent Pharmacy, as
6 well as Respondent Pharmacy and Respondent Peters' failure to properly maintain and secure
7 those drugs, amounts to incompetence and/or gross negligence. The conduct and specific
8 dangerous drug variances, numbering in the thousands, are described in paragraph 31,
9 subparagraphs (a) through (u) inclusive, and paragraph 32, which are hereby incorporated by
10 reference as though set forth fully.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Keep the Pharmacy in a Clean and Orderly Condition)**

13 34. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
14 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated
15 California Code of Regulations, title 16, section 1714, subdivision (c), by failing to keep the
16 pharmacy in a clean and orderly condition. The circumstances are as follows:

17 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an inspector for
18 the Board found that the pharmacy's drug shelves, drawers and cabinets were extremely dirty, with
19 a thick layer of dust and grim throughout the pharmacy storage areas. In addition, the sink in the
20 bathroom did not have running water.

21 **DISCIPLINARY CONSIDERATIONS**

22 35. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy
23 and Respondent Peters, Complainant alleges the following:

24 a. On or about November 25, 1991, the California State Board of Pharmacy brought a
25 disciplinary action against Respondent Peters and Respondent Pharmacy entitled *In the Matter of*
26 *the Accusation Against Harry Peters, Kerr's Pharmacy*, Board Case No. AC 1988 1581. On or
27 about June 10, 1994, a stipulation became effective whereby Respondent Peters' Original License
28 Certificate No. PGO28331 was placed on probation for three years and Respondent Pharmacy's

1 Original Permit No. ZBO18241 was placed on probation for three years. That decision is now
2 final and is incorporated by reference as if set forth fully.

3 36. To determine the degree of discipline, if any, to be imposed on Respondent John
4 William Shafer, Complainant alleges the following:

5 a. On or about December 21, 1984, the California State Board of Pharmacy brought a
6 disciplinary action against Respondent Shafer entitled *In the Matter of the Accusation Against The*
7 *Pharmacy; John Shafer; Richard Foster; Amos Cranford*, Board Case No. 1222. On or about
8 December 6, 1985, the Board adopted the Administrative Law Judge's Proposed Decision
9 suspending Respondent Shafer's license for one year. The suspension was stayed and Respondent
10 Shafer was placed on probation for one year. That decision is now final and is incorporated by
11 reference as if set forth fully.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 35423, issued to Kerr's
16 Pharmacy, Harry Peters, Pharmacist-In-Charge;

17 2. Revoking or suspending Pharmacist License Number RPH 28331, issued to Harry
18 Peters;

19 3. Revoking or suspending Pharmacist License Number RPH 36106, issued to John
20 William Shafer;

21 4. Ordering Harry Peters, Harry Peters and John William Shafer to pay the Board of
22 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3; and,

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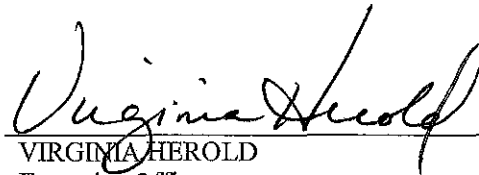
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5. Taking such other and further action as deemed necessary and proper.

DATED:

2/2/15



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

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