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

10 In the Matter of the Accusation Against:

Case No. 5233

11 **EDIO CORP. DBA UNIVERSITY CARE**
12 **PHARMACY**
13 **5848 Santa Monica Blvd.**
Los Angeles, CA 90038

ACCUSATION

14 **Pharmacy Permit No. PHY 50352,**

15 **and**

16 **LISA CAROL HOLLOMAN**
17 **9009 Lloyd Pl.**
W. Hollywood, CA 90069

18 **Pharmacist License No. RPH 47958**

19 Respondent.
20

21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 25 2. On or about September 27, 2010, the Board of Pharmacy ("Board") issued Pharmacy
26 Permit Number PHY 50352 to Edio Corp. dba University Care Pharmacy ("Respondent
27 Pharmacy"). The Pharmacy Permit was in full force and effect at all times relevant to the charges
28 brought herein, expired on September 1, 2014, and has been cancelled.

1 STATUTES AND REGULATIONS

2 7. Section 4013 of the Code states:

3 "(a) Any facility licensed by the board shall join the board's e-mail notification list within
4 60 days of obtaining a license or at the time of license renewal.

5 "(b) Any facility licensed by the board shall update its e-mail address with the board's e-
6 mail notification list within 30 days of a change in the facility's e-mail address.

7 "(c) An owner of two or more facilities licensed by the board may comply with subdivisions
8 (a) and (b) by subscribing a single e-mail address to the board's e-mail notification list, where the
9 owner maintains an electronic notice system within all of its licensed facilities that, upon receipt
10 of an e-mail notification from the board, immediately transmits electronic notice of the same
11 notification to all of its licensed facilities. If an owner chooses to comply with this section by
12 using such an electronic notice system, the owner shall register the electronic notice system with
13 the board by July 1, 2011, or within 60 days of initial licensure, whichever is later, informing the
14 board of the single e-mail address to be utilized by the owner, describing the electronic notice
15 system, and listing all facilities to which immediate notice will be provided. The owner shall
16 update its e-mail address with the board's e-mail notification list within 30 days of any change in
17 the owner's e-mail address.

18 "(d) This section shall become operative on July 1, 2010."

19 8. Section 4081, subdivision (a) of the Code states:

20 "(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of
21 dangerous drugs or dangerous devices shall be at all times during business hours open to
22 inspection by authorized officers of the law, and shall be preserved for at least three years from
23 the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-
24 party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist,
25 podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a
26 currently valid and unrevoked certificate, license, permit, registration, or exemption under
27 Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
28

1 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who
2 maintains a stock of dangerous drugs or dangerous devices."

3 9. Section 4301 of the Code states, in pertinent part:

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

7

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

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

13

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

16

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

21

22 10. Section 4342, subdivision (a) of the Code states:

23 "(a) The board may institute any action or actions as may be provided by law and that, in its
24 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not
25 conform to the standard and tests as to quality and strength, provided in the latest edition of the
26 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
27 Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division
28 104 of the Health and Safety Code)."

1 11. Health and Safety Code section 111335 states, "[a]ny drug or device is misbranded if
2 its labeling or packaging does not conform to the requirements of Chapter 4 (commencing with
3 Section 110290)."

4 12. Health and Safety Code section 111345 states:

5 "Any drug or device is misbranded if any word, statement, or other information required by
6 or under this part to appear on the label or labeling is not prominently placed on the label or
7 labeling with conspicuousness, as compared with other words, statements, designs, or devices in
8 the labeling, and in terms as to render it likely to be read and understood by the ordinary
9 individual under customary conditions of purchase and use.

10 13. California Code of Regulations, title 16, section 1707.5, subdivision (d) states:

11 "(d) The pharmacy shall have policies and procedures in place to help patients with limited
12 or no English proficiency understand the information on the label as specified in subdivision (a)
13 in the patient's language. The pharmacy's policies and procedures shall be specified in writing and
14 shall include, at minimum, the selected means to identify the patient's language and to provide
15 interpretive services in the patient's language. The pharmacy shall, at minimum, provide
16 interpretive services in the patient's language, if interpretive services in such language are
17 available, during all hours that the pharmacy is open, either in person by pharmacy staff or by use
18 of a third-party interpretive service available by telephone at or adjacent to the pharmacy counter."

19 COST RECOVERY

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

24 RELEVANT BACKGROUND FACTS

25 15. On January 15, 2013, the Board received a letter dated January 9, 2013 from the State
26 of California, Department of Health Care Services contending that after conducting a field audit
27 review of Respondent Pharmacy, the Department of Health Care Services determined that
28 Respondent Pharmacy did not purchase enough drug inventory to sustain dispensing.

1 16. On October 7, 2013, a Board Inspector conducted a routine inspection of Respondent
2 Pharmacy. Respondent Holloman was present during the inspection, as was owner Yana
3 Zilberman, and a potential purchaser of Respondent Pharmacy. During the inspection, the Board
4 Inspector opened one of the pharmacy drawers and Respondent Holloman shouted "That drawer is
5 not mine. It belongs to the technicians and I got nothing to do with that." In the drawer, the
6 Board Inspector found various medications in various containers. Some of the medications were
7 in amber vials with handwritten labels, some of the medications were in containers with printed
8 labels but the patients' names and had been scratched out, and some of the medications were in
9 the original manufacture containers.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Billing Fraud)**

12 17. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
13 under Code section 4301, subdivision (f) on the grounds of unprofessional conduct in that
14 Respondent Pharmacy and Respondent Holloman committed acts of dishonesty and fraud when
15 the Pharmacy did not reverse insurance claims for certain Medicare Part D patients' prescriptions,
16 which were found in a drawer during a routine inspection on October 7, 2013, as follows:

| 17 Drug Name | Quantity | Description |
|---|------------|---|
| 18 Benicar 20mg (RX #302732) dispensed on 09/18/13 | 30 tablets | Respondent Pharmacy discontinued the prescription and did not reverse the billing |
| 19 Hydroxyzine 25mg (RX #296727) dispensed on 20 10/02/13 | 30 tablets | Respondent Pharmacy discontinued the prescription and did not reverse the billing |
| 21 Buprenorphine/naloxone 8- 2mg (RX #293255) dispensed 22 on 9/11/13 | 45 tablets | Respondent Pharmacy did not reverse the billing claim. |
| 23 Amlodipine/benazepril 10- 20mg (RX #302081) 24 dispensed on 9/12/13) | 29 tablets | Respondent Pharmacy did not reverse the billing claim |

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Record Keeping Violations)**

27 18. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
28 under Code section 4301, subdivision (o), in conjunction with Code section 4081, subdivision (a),

1 on the grounds of unprofessional conduct for failing to maintain a proper inventory in that on
 2 October 7, 2013, during a routine inspection, a Board Inspector discovered the following
 3 medications in a drawer:

| Drug Name | Quantity |
|--|------------|
| Benicar 20mg (RX #302732) dispensed on 09/18/13 | 30 tablets |
| Hydroxyzine 25mg (RX #296727) dispensed on 10/02/13 | 30 tablets |
| Buprenorphine/naloxone 8-2mg (RX #293255) dispensed on 9/11/13 | 45 tablets |
| Amlodipine/benazepril 10-20mg (RX #302081) dispensed on 9/12/13) | 29 tablets |

12 These medications appeared in Respondent Pharmacy's computer system as paid by insurance and
 13 therefore would not have been included in Respondent Pharmacy's inventory of dangerous of
 14 drugs.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Misbranded Drugs)**

17 19. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
 18 under Code section 4301, subdivision (j) and subdivision (o), in conjunction with Code section
 19 4342 and Health and Safety Code sections 111335 and 111345, on the grounds of unprofessional
 20 conduct in that during a routine inspection on October 7, 2013, a Board Inspector found the
 21 following medications in a drawer in amber vials without proper labeling (i.e., missing lot
 22 numbers or expiration dates):

| Drug Name and Strength | Quantity |
|----------------------------------|------------|
| Amlodipine/benazepril 2.5mg/10mg | 30 tablets |
| Hyzaar 50/12/5mg | 30 tablets |
| Actonel 5 mg | 30 tablets |
| Seroquel XR 200 mg | 70 tablets |

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Knowingly Misrepresenting Documents)**

3 20. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
4 under Code section 4301, subdivision (g) on the grounds of unprofessional conduct in that during
5 a routine inspection on October 7, 2013, Respondent Holloman knowingly misrepresented the
6 existence of a state of facts to a Board Inspector when she falsely stated that Respondent
7 Pharmacy had in place policies and procedures to help patients with limited or no English
8 understand the information on the prescription medication labels. The circumstances are as
9 follows:

10 21. During the routine inspection, the Board Inspector asked Respondent Holloman for
11 the interpretive services policies and procedures. Respondent Holloman indicated that they
12 existed, but she could not find them. Approximately 40 to 50 minutes later, Respondent
13 Holloman produced policies and procedures bearing her signature and dated June 19, 2013.
14 However the document had information printed at the top (resembling fax information) stating
15 "10/07/2013 11:28 8187823100 Kovacs Care Pharmacy Page 01/05." White erasing tape had
16 partially whited over some lettering and "University Care Pharmacy" was handwritten on the
17 document. The Board Inspector asked Respondent Holloman who the policies and procedures
18 belonged to. At first, Respondent Holloman insisted that they belonged to Respondent Pharmacy.
19 However, she eventually admitted that the policies belonged to Kovacs Care Pharmacy (PHY
20 51131), that they had been faxed over that very morning, and she had written "University Care
21 Pharmacy" on the document.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Failure to Have Interpretation Procedures)**

24 22. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
25 under Code section 4301, subdivision (o), in conjunction with California Code of regulations, title
26 16, section 1707.5, subdivision (d), on the grounds of unprofessional conduct, in that during a
27 routine inspection on October 7, 2013, Respondent Pharmacy did not have policies and
28

1 procedures in place to help patients with limited or no English understand the information on the
2 prescription medication labels.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Join Board's E-Mail Notification)**

5 23. Respondent Pharmacy and Respondent Holloman are subject to disciplinary action
6 under Code section 4301, subdivision (o), in conjunction with Code section 4013, on the grounds
7 of unprofessional conduct in that on October 7, 2013, during a routine inspection, Respondent
8 Holloman admitted that Respondent Pharmacy had not joined the Board's e-mail notification list.
9 Respondent Pharmacy was required to join the e-mail within 60 days of obtaining a license.

10 **DISCIPLINE CONSIDERATIONS**

11 24. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy,
12 Complainant alleges that on or about January 26, 2016, in a prior action, the Board issued Citation
13 Number CI 2014 64013 and ordered Respondent Pharmacy to pay a \$5,000.00 fine for violating
14 Title 21, Code of Federal Regulations, § 1305.13, subdivision (e) [Purchaser must record on Copy
15 3 of the DEA Form 222 the number of commercial or bulk containers furnished on each item and
16 the dates on which the containers are received by the purchaser]; and Code section 4081
17 subdivision (a) [Records of Dangerous Drugs and Devices Kept Open for Inspection;
18 Maintenance of Records, Current Inventory]. That Citation is now final and is incorporated by
19 reference as if fully set forth herein.

20 25. To determine the degree of discipline, if any, to be imposed on Respondent
21 Holloman, Complainant alleges that on or about January 26, 2016, in a prior action, the Board
22 issued Citation Number CI 2014 64014 and ordered Respondent Holloman to pay a \$5,000.00
23 fine for violating Title 21, Code of Federal Regulations, § 1305.13, subdivision (e) [Purchaser
24 must record on Copy 3 of the DEA Form 222 the number of commercial or bulk containers
25 furnished on each item and the dates on which the containers are received by the purchaser]; and
26 Code section 4081 subdivision (a) [Records of Dangerous Drugs and Devices Kept Open for
27 Inspection; Maintenance of Records, Current Inventory]. That Citation is now final and is
28 incorporated by reference as if fully set forth herein.

1 26. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy,
2 Complainant alleges that on or about February 23, 2012, in a prior action, the Board issued
3 Citation Number CI 2011 49876 and ordered Respondent Pharmacy to pay a \$4,250.00 fine for
4 violating Code section 4126.5 [non-compliant sales to a wholesaler]. That Citation is now final
5 and is incorporated by reference as if fully set forth herein.

6 PRAYER

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

- 9 1. Revoking or suspending Pharmacy Permit Number PHY 50352, issued to Edio Corp.
10 dba University Care Pharmacy;
- 11 2. Revoking or suspending Pharmacist License Number RPH 47958, issued to Lisa
12 Carol Holloman;
- 13 3. Ordering Edio Corp. dba University Care Pharmacy and Lisa Carol Holloman to pay
14 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 11/15/16



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

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