

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2643
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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 No. 5321

12 **THE DRUGGIST, INC.,**
13 **JOEL ABERGEL, OWNER**
14 **27867 Smyth Drive**
Valencia, CA 91355

OAH No. 2017120806

15 **Pharmacy Permit No. PHY 50146,**

THIRD AMENDED ACCUSATION

16 **and**

17 **JOEL ABERGEL AKA JOELLE**
18 **ABERGEL**
19 **23905 Lakeside Road**
Santa Clarita, CA 91355

20 **Pharmacist License No. RPH 41192**

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

25 1. Anne Sodergren ("Complainant") brings this Accusation solely in her official
26 capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer
27 Affairs.
28

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

5 9. **Section 4307**, subdivision (a), of the Code states, in pertinent part:

6 (a) Any person who has been denied a license or whose license has been revoked or is
7 under suspension, or who has failed to renew his or her license while it was under suspension, or
8 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
9 any other person with management or control of any partnership, corporation, trust, firm, or
10 association whose application for a license has been denied or revoked, is under suspension or has
11 been placed on probation, and while acting as the manager, administrator, owner, member,
12 officer, director, associate, partner, or any other person with management or control had
13 knowledge of or knowingly participated in any conduct for which the license was denied,
14 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
15 administrator, owner, member, officer, director, associate, partner, or in any other position with
16 management or control of a licensee as follows:

17 (1) Where a probationary license is issued or where an existing license is placed on
18 probation, this prohibition shall remain in effect for a period not to exceed five years.

19 (2) Where the license is denied or revoked, the prohibition shall continue until the
20 license is issued or reinstated.

21 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
22 other person with management or control of a license" as used in this section and Section 4308,
23 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

24 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
26 However, no order may be issued in that case except as to a person who is named in the caption,
27 as to whom the pleading alleges the applicability of this section, and where the person has been
28 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part

1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
2 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
3 of law.

4 10. **Section 4332**, subdivision (a), of the Code states, in pertinent part:

5 "Any person who fails, neglects, or refuses to maintain the records required by Section
6 4081 or who, when called upon by an authorized officer of a member of the board, fails, neglects,
7 or refuses to produce or provide the records within a reasonable time, or who willfully produces
8 or furnishes records that are false, is guilty of a misdemeanor.

9 11. **Health and Safety Code section 11153** states, in pertinent part:

10 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
11 purpose by an individual practitioner acting in the usual course of his or her professional practice.
12 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
13 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
14 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
15 an order purporting to be a prescription which is issued not in the usual course of professional
16 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
17 controlled substances, which is issued not in the course of professional treatment or as part of an
18 authorized narcotic treatment program, for the purpose of providing the user with controlled
19 substances, sufficient to keep him or her comfortable by maintaining customary use."

20 12. **California Code of Regulations, title 16, section 1715.6** states, "[t]he owner shall
21 report to the Board within thirty (30) days of discovery of any loss of the controlled substances,
22 including their amounts and strengths."

23 13. California Code of Regulations, title 16, **section 1718** states:

24 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
25 Code shall be considered to include complete accountability for all dangerous drugs handled by
26 every licensee enumerated in Sections 4081 and 4332.

27 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
28 available for inspection upon request for at least 3 years after the date of the inventory."

1 14. California Code of Regulations, title 16, **section 1761** states:

2 "(a) No pharmacist shall compound or dispense any prescription which contains any
3 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
4 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
5 validate the prescription.

6 "(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
7 a controlled substance prescription where the pharmacist knows or has objective reason to know
8 that said prescription was not issued for a legitimate medical purpose."

9 15. **Code of Federal Regulations, title 21, section 1304.04**, subdivision (h), states in
10 pertinent part:

11 "(h) Each registered pharmacy shall maintain the inventories and records of controlled
12 substances as follows:

13 "(1) Inventories and records of all controlled substances listed in Schedule I and II
14 shall be maintained separately from all other records of the pharmacy.

15 "(2) Paper prescriptions for Schedule II controlled substances shall be maintained at
16 the registered location in a separate prescription file.

17 "(3) Inventories and records of Schedules III, IV, and V controlled substances shall be
18 maintained either separately from all other records of the pharmacy or in such form that the
19 information required is readily retrievable from ordinary business records of the pharmacy."

20 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

21 16. **Hydromorphone, the generic name for Dilaudid**, is a Schedule II controlled
22 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J) and is a
23 dangerous drug pursuant to Code section 4022.

24 17. **Hydrocodone and acetaminophen ("hydrocodone/apap"), the generic name for**
25 **Norco and Lortab**, is a Schedule III controlled substance pursuant to Health and Safety Code
26 section 11056, subdivision (e)(4) and is a dangerous drug pursuant to Code section 4022. As of
27 October 6, 2014, hydrocodone/apap became a Schedule II controlled substance pursuant to
28 United States Code, title 21, section 812.

1 Captain of Santa Clarita Valley Station Sheriff's Department sent a letter to Respondent PIC
2 notifying him that several individuals entered Respondent Pharmacy to purchase oxycodone with
3 a prescription, and deliver the oxycodone pills to [M.L.] sitting in his car parked in front of
4 Respondent Pharmacy. The Captain further explained that fraudulent prescriptions were being
5 filled at Respondent Pharmacy for individuals who do not reside within the City of Santa Clarita.
6 He asked Respondent PIC to institute a policy preventing the criminal element from traveling to
7 the City of Santa Clarita by refusing to fill and/or call to verify prescriptions for narcotics if the
8 prescribing physician or patient did not reside in the City of Santa Clarita.

9 23. Inspector R.V. proceeded to perform a physical inspection of the pharmacy and
10 reviewed the prescription files while Inspector A.N. inspected the compounding area. Inspector
11 R.V. examined the Schedule II prescription files and noticed a large number of the prescriptions
12 were from patients out of the area, were mainly from 4 – 5 doctors out of the area and were filled
13 in sequence, meaning filled one right after the other. He questioned Respondent Abergel about
14 these prescriptions and asked if he saw each patient in the pharmacy. Respondent Abergel
15 informed Inspector R.V. some of the patients he never saw nor provided consultation in person
16 for new prescriptions dispensed. The prescriptions were given to him by "drivers". Respondent
17 Abergel did not have any copies of any type of identification for the drivers. The prescriptions
18 were mostly for Dilaudid 4mg, Oxycodone 30mg and Percocet 10/325 (Endocet). Inspector R.V.
19 secured 993 of these prescriptions. Inspector R.V. asked Respondent Abergel do a "Stock on
20 Hand" inventory on brand and generic forms of Dilaudid 4mg, Oxycodone 30mg and Endocet
21 10/325. He requested the last DEA Biennial Inventory.

22 24. Inspector R.V. asked Respondent Abergel if Respondent Druggist had any break-ins
23 or losses. Respondent Abergel provided a "Report of Theft or Loss of Controlled Substances"
24 and the card of the investigator from the local sheriff's department. However, there were no loss
25 of drugs Inspector R.V. was going to audit on the loss report. Respondent Abergel further
26 informed Inspector R.V. that he did not report the loss to the Board.

27
28

1 25. Inspector A.N. obtained prescription labels that were not in compliance with
2 pharmacy law and in addition a corrected form that was compliant. Inspector R.V. filled out an
3 Inspection Report, noted the discussed items and requested the following:

- 4 • All invoices from all wholesalers for brand and generic forms Dilaudid 4mg,
5 oxycontin 30mg, and percocet10/325 from 7/8/2010 to 12/18/2012 to be sent to
6 Inspector R.V..
- 7 • Drug utilization report for brand and generic forms of Dilaudid 4mg, Oxycontin
8 30mg and Percocet 10/325 from 7/8/2010 - 12/18/2012 to include name and
9 addresses of patients and doctors, RX no., date, drug, quantity, days supply and
10 method of payment.
- 11 • Control substance log (daily logs) for all control substances from 7/8/2010 to
12 12/18/2012 to include names and addresses of patients and doctors, rx no, rx date,
13 drug, quantity, days' supply and method of payment to be in excel format.
- 14 • All DUR and logs to be on separate cd's or flash drives (2 copies of each) to be
15 sent, and all invoices from all wholesalers for brand and generic forms for
16 Dilaudid 4mg, to Inspector R.V., PO Box 594, San Clemente, CA 92674 by
17 12/22/2012.

18 26. Inspector R.V. issued Official Receipt # 200191 for the secured documents, and the
19 inspectors left.

20 27. On March 28, 2013, Inspector R.V. sent out letters to 5 patients of Respondent
21 Druggist requesting an interview. All 5 letters were returned as undeliverable (Not included in
22 report, but held in evidence).

23 28. On or about January 4, 2013, Inspector R.V. received the requested documents from
24 The Druggist which consisted of:

- 25 • Cover letter from Respondent Abergel and his wife (Exhibit 8, 4 pages). Respondent
26 Abergel stated the doctor's office asked him to deliver the prescriptions to their office
27 after a driver delivered them to the pharmacy. Later it was changed to a driver delivering
28

1 the prescription documents and then picking up the filled prescriptions the next day.

2 Respondent Abergel stated his wife called the DEA and the state Board.

- 3 • Mrs. Abergel stated she and her husband met with the Pain Management Physicians in
4 Van Nuys and they were asked to deliver prescriptions to their office. The wife then called
5 the DEA and the state board and was informed nothing prohibited delivering to a doctor's
6 office.
- 7 • Last page of the document was the corrections they made as a result of the inspection.
- 8 • I received the flash drives with DURs for Dilaudid 4mg, oxycodone 30 and Endocet 10/325
9 (not included in report, but held in evidence).
- 10 • The Druggist also provided invoices from H.D. Smith and Valley Wholesale for the 3
11 drugs.

12 29. Inspector R.V. printed out the DUR's from the flash drive provided by Respondent
13 Druggist. That document showed Respondent Druggist dispensed 16,640 tablets of Dilaudid 4mg
14 and 2,575 tablets of generic Hydromorphone 4mg for a total of 19,215 tablets; 249,152 tablets of
15 Oxycodone 30mg and 53,516 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

16 30. Inspector R.V. entered the invoices provided by Respondent Druggist from H.D.
17 Smith and Valley Wholesale for the 3 drugs onto a spread sheet which showed Respondent
18 Druggist purchased 18,000 tablets of Dilaudid 4mg, 224,500 tablets of Oxycodone 30mg and
19 50,400 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

20 31. On June 30, 2014 and July 24, 2014, Inspector R.V. forwarded letters to H.D. Smith
21 and Valley Wholesale requesting records of sales to Respondent Druggist for Dilaudid 4mg brand
22 and generic, Oxycodone 30mg and Endocet 10/325 from 7/8/2010 – 12/18/2012. Her further sent
23 another letter to H.D. Smith on July 29, 2014 requesting additional information.

24 32. On or about July 20, 2014, Inspector R.V. received the requested records from Valley
25 Wholesale, in Excel format, which showed Respondent Druggist purchased 15, 100 tablets of
26 Dilaudid 4mg, 44,500 tablets of Endocet 10/325, 2,400 tablets of Hydromorphone 4mg, 54,500
27 tablets of Oxycodone 30mg (bottles of 100), 90,500 tablets of Oxycodone 30mg (bottles of 500),
28

1 an additional 55,700 tablets of Oxycodone 30mg (Mallinckrodt) and 400 Oxycodone
2 Acetaminophen 10/325.

3 33. On or about July 29, 2014, Inspector R.V. received the reply from H.D. Smith in
4 Excel format which showed Respondent Druggist purchased 19,300 tablets of Dilaudid 4mg,
5 248,800 tablets of Oxycodone 30mg and 54,100 tablets of Endocet 10/325.

6 34. When compared to the invoices provided by Respondent Druggist, it revealed that
7 Respondent Druggist did not provide invoices for 800 tablets of Dilaudid 4mg, 24,300 tablets of
8 oxycodone 30mg and 3,700 tablets of Endocet 10/325.

9 35. Using the DEA inventory of 7/8/2010 as the initial amount, the invoices provided by
10 the wholesalers as the amount ordered, the DUR's provided by Respondent Druggist as the
11 amount dispensed and the Stock on Hand inventory as the ending inventory, Inspector R.V.
12 performed a "Selected Drug Audit Summary" which Respondent Druggist did not account for 74
13 Dilaudid 4mg, 164 Oxycodone 30mg and 584 Endocet 10/325.

14 36. Examination of the 993 prescription secured from Respondent Druggist showed the
15 majority were written by:

- 16 • Dr. C. A., located in Inglewood
- 17 • Dr. R. C., located in Studio City
- 18 • Dr. B. O., located at 7035 Reseda Blvd., Reseda
- 19 • Dr. J. G., located at 7035 Reseda Blvd., Reseda
- 20 • Dr. R. L., located at 7035 Reseda Blvd., Reseda
- 21 • Dr. R. S., located at 7035 Reseda Blvd., Reseda
- 22 • Dr. H. S., located in Los Angeles

23 37. Inspector R.V. included samples of the secured prescriptions from The Druggist:

- 24 • On April 29, 2011, there were 12 prescriptions from Drs. B.O. and Dr. J.G. for
25 Endocet 10/325, Oxycodone 30mg and Dilaudid 4mg. Patients came from Los
26 Angeles, Canoga Park, Burbank, N. Hollywood, and Panorama City. The
27 prescription numbers were in sequence showing the patients or prescriptions came
28 in the same time.

- 1 • On May 6, 2011, there were 14 prescriptions from Drs. J.G., R.L., and B.O. for
2 Oxycodone 30mg, Endocet 10/325, and Dilaudid 4mg. Patients were from Los
3 Angeles, Beverly Hills, and North Hollywood. Prescriptions were in sequence.
- 4 • On June 6, 2011, there were 20 prescriptions from Drs. J.G., R.L., B.O. for
5 Oxycodone 30mg and Endocet 10/325. Patients were from S. Los Angeles, Rialto,
6 Hacienda Heights, Gardena, California City, Venice and Moreno Valley.
7 Prescription numbers were in sequence.
- 8 • On July 21, 2011, there were 17 prescriptions from Drs. B.O., J.G., R.L., and R.S. (all
9 same office address) for Endocet 10/325, Lortabs, Hydrocodone/apap 10/325,
10 Oxycodone 30mg, Norco, and Dilaudid 4mg. Patients came from S. Los Angeles,
11 N. Hollywood, Sylmar, S. Pasadena, Mission Viejo, Palm Springs and Norwalk.
12 Prescriptions were in sequence.
- 13 • On August 16, 2011, there were 16 prescriptions from Drs. J.G., R.L., R.S., and B.O.
14 for oxycodone 30mg, Endocet 10/325 and Dilaudid 4mg. Patients were from S. Los
15 Angeles, Inglewood, Santa Monica, Pomona, Compton, Manhattan Beach,
16 Paramount, and Glendale. Prescriptions were in sequence.
- 17 • On January 30, 2012, there were 12 prescriptions from Drs. C.A. and H.S. for
18 Oxycodone 30mg. Each doctor had the same dosage for his patient. The patients
19 came from Compton, S. Los Angeles, Northridge, Long Beach, Sylmar, Mission
20 Hills and Inglewood. The prescription numbers were in sequence.
- 21 • On February 2, 2012, there were 11 prescriptions from Dr. C.A. for Oxycodone
22 30mg. All of the patients had the same dosage.
- 23 • On February 9, 2012, there were 10 prescriptions from Dr. R.C. for Oxycodone
24 30mg. Patients were from Los Angeles, Inglewood and Sylmar. The prescription
25 numbers were in sequence.

26 38. In summary, Respondent Druggist filled these prescriptions when there too many red
27 flags for the pharmacist not to notice that these prescriptions were not for a legitimate medical
28 purpose:

- Doctors were out of area and patients were as far as Palm Springs.
- Patients were given the same medication and the same dosage.
- Drivers provided no identification and no proof they were working for the doctor.
- The Druggist did not obtain CURES reports for these patients to determine if they were doctor shopping, obtaining prescriptions from multiple pharmacies.

39. Inspector R.V. obtained some patient profiles (Respondent Druggist DUR's) and Patient Activity Reports (PAR) from CURES on patients of Respondent Druggist which showed:

- Patient profile for R.A located in West Hollywood showed from 5/1/2012 to 7/24/2012 obtained prescriptions for Oxycodone 30mg from 3 doctors as far away as Corona. The PAR showed R.A. obtained prescriptions for Oxycodone from 8 doctors and 7 pharmacies within a year.
- Respondent Druggist's own patient profile for R.A. #2 showed in 4 months he had obtained Oxycodone 30mg from 4 doctors from Woodland Hills to Corona.
- PAR for A.C. showed he obtained Oxycodone 30mg from 3 pharmacies and 4 doctors within 11 months.
- PAR for D.G. living in Long Beach showed he obtained Oxycodone and other controlled substances from 7 pharmacies (from Long Beach, Ontario to Valencia) and from 7 doctors.
- PAR for S.H. living in Los Angeles showed the patient obtained Oxycodone 30mg from 9 pharmacies from Los Angeles to Desert Hot Springs and 9 doctors from Los Angeles to Corona, while obtaining Oxycodone 30mg from Respondent Druggist.
- Respondent Druggist's own patient profile for H.L. living in Lancaster, had Rx # 60232, dated 12/1/2011 for 120 Oxycodone 30mg (30 days' supply) by Dr. C. and Rx # 60925, dated 12/20/2011 for 180 oxycodone (30 DS) by Dr. A., 11 days early. The PAR for H.L. shows the patient went to 9 pharmacies from Los Angeles to Lancaster and 7 doctors from Los Angeles to Corona while obtaining prescriptions from Respondent Druggist.

- 1 • The PAR for A.J. living in Riverside shows the patient went to 5 pharmacies from
2 Long Beach, Gardena to Valencia and to 4 doctors from Long Beach, Panorama
3 City to Los Angeles while obtaining controlled substances from Respondent
4 Druggist.
- 5 • The PAR for B.M. (Exhibit 32, 1 page) shows the patient had Rx # 541124, dated
6 1/6/2012 for 180 oxycodone 30mg (30ds) at another pharmacy by Dr. A.. The
7 Druggist filled Rx # 62258, dated 1/28/2012 for 180 Oxycodone 30mg by Dr. M.S.,
8 8 days early. The patient had Rx # 54424, dated 3/2/2012 for 180 Oxycodone 30mg
9 (30 DS) at another pharmacy by Dr. A. Respondent Druggist filled Rx # 64202,
10 dated 3/12/2012 for 150 Oxycodone 30mg by Dr. S., 20 days early.
- 11 • The Par for N.E. shows the patient went to 4 pharmacies and 6 doctors while
12 obtaining prescriptions for controlled substances while obtaining prescriptions from
13 Respondent Druggist.
- 14 • The PAR for J.O., living in N. Hollywood, had Rx # 348972, written by Dr. G. dated
15 1/7/2011 for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
16 Respondent Druggist filled Rx # 46862, dated 1/10/2011, written by Dr. B. for 100
17 Oxycodone 30 mg (20DS), 23 days early. J.O. had Rx # 353146, dated 2/11/2011,
18 written by Dr. G. for 90 Oxycodone 30mg (30DS). Respondent Druggist filled Rx
19 48699, dated 2/21/2011, written by Dr. B. for 100 Oxycodone 30mg, 20 days early.
20 J.O. had Rx # 49276, dated 3/7/2011, written by Dr. B. for 100 Oxycodone 30mg
21 (20DS) dispensed at Respondent Druggist. J.O had Rx # 356523, dated 3/11/2011,
22 written by Dr. G. for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
23 J.O. now has 50 day supply of Oxycodone 30mg at home. Respondent Druggist
24 filled Rx # 49789, dated 3/21/2011, written by Dr. B. for 100 Oxycodone 30mg
25 (20DS), 40 days early. Further, Respondent Druggist filled Rx # 50328, dated
26 4/4/2011, written by Dr. Dr. B. for 100 Oxycodone 30mg, over 7 days early. J.O.
27 had Rx # 274305, dated 1/31/2012, written by Dr. E. for 150 Oxycodone 30mg
28 (25DS). Respondent Druggist filled Rx # 62922, dated 2/13/2012, written by Dr. G.

1 for 60 oxycodone 30mg. 12 days early. J.O went to 9 pharmacies from Valencia,
2 Lancaster to Panorama City and 7 doctors while obtaining prescriptions for
3 controlled substances from Respondent Druggist.

4 40. Had Respondent Druggist obtained PAR's and reviewed their own patient profiles for
5 these patients they would have noticed the multiple pharmacies, multiple doctors and early refills.

6 41. On August 14, 2014, Inspector R.V. issued a Written Notice for violation of
7 California Code of Regulation sections 1761(a), 1715.6, 1718; Business and Professions section
8 4081(a) and Health and Safety Code section 11153(a).

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Filling of Erroneous or Uncertain Prescriptions and Failure to Assume Co-Responsibility**
11 **in Legitimacy of a Prescription)**

12 42. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
13 under California Code of Regulations section 1761, subd. (a) in conjunction with Health and
14 Safety Code section 11153, subd (a), and Bus. Prof. C. §§4113, 4156, 4301, 4301(d), 4301 (j),
15 4301(o), 4302, 4035 and 4306.5, in conjunction with Health & Safety C. §11153, subdivision (a),
16 and pursuant to *Vermont & 110th Medical Arts v. Board of Pharmacy* (1981) 125 Cal.App.3d 19
17 (hereinafter referred as *Vermont*), pursuant to *Sternberg v. Board of Pharmacy* (2015) 239 Cal.
18 App. 4th 1159 (hereinafter referred as *Sternberg*), and pursuant to the Board of Pharmacy's
19 Precedential Decision No. 2013-01 (*Board of Pharmacy v. Pacifica Pharmacy Corporation, et al.*,
20 (2012) Case No. 3802, OAH No. 2011010644) (hereinafter referred as *Pacifica*), *Arenstein v.*
21 *Cal. State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192, on the grounds of unprofessional
22 conduct because Respondents failed to exercise or implement their best professional judgment or
23 their corresponding responsibility to ensure that controlled substances are dispensed for a
24 legitimate medical purpose, in that Respondents compounded or dispensed prescriptions which
25 contain significant error, omission, irregularity, uncertainty, ambiguity or alteration. Respondents
26 failed to contact the prescriber to obtain the information needed to validate the prescription. Even
27 after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled
28 substance prescription where the pharmacist knows or has objective reason to know that said

1 prescription was not issued for a legitimate medical purpose and in filling these prescriptions.
2 Respondent Druggist filled prescriptions for habitual doctor shoppers and erroneous/uncertain
3 prescriptions as set forth in paragraphs 56 and 57. J.O went to 9 pharmacies from Valencia,
4 Lancaster to Panorama City and 7 doctors while obtaining prescriptions for controlled substances
5 from The Druggist. Filling prescriptions for controlled substances for patients from all areas of
6 Southern California coming in at the same time and also from doctors out of the area. These
7 prescriptions for controlled substance were filled and provided to un-identified, unauthorized
8 drivers without confirming with the patient.

9 43. Complainant refers to and by this reference incorporates the allegations set forth
10 above in paragraphs 21-41, inclusive, as though set forth fully.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Keep Complete Accountability)**

13 44. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
14 under California Code of Regulations section 1718, in conjunction with Code sections 4081 and
15 4332, and California Federal Regulations, Title 21, section 1304, and Bus. Prof. C. §4113, and
16 Stenberg, in that based on records from 7/8/2010 – 12/18/2012, Respondents failed to account for
17 74 tablets of Dilaudid 4mg, 164 tablets of Oxycodone 30mg and 584 tablets of Endocet 10/325.

18 45. Complainant refers to and by this reference incorporates the allegations set forth
19 above in paragraphs 21-41, inclusive, as though set forth fully.

20
21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Notify Board of Loss of Controlled Substances)**

23 46. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
24 Under California Code of Regulations, Title 16, section 1715.6, and Bus. Prof. C. §4113, and
25 Stenberg, in that Respondents failed to report the loss of 400 Hydrocodone/apap 5/500, 200
26 Hydrocodone/apap 7.5/750, 480 Hydrocodone/apap 10/650, 180 Hydrocodone/apap 10/325 and
27 260 Hydrocodone/apap 10/325 on 9/3/2012.

28 47. Complainant refers to and by this reference incorporates the allegations set forth

1 above in paragraphs 21-41, inclusive, as though set forth fully.

2 **OTHER MATTERS**

3 48. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
4 PHY 50146 issued to The Druggist Inc., The Druggist Inc. shall be prohibited from serving as a
5 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
6 five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy
7 Permit Number PHY 50146 is reinstated if it is revoked.

8 49. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
9 PHY 50146 issued to The Druggist Inc. while Joel Abergel has been an officer and owner and
10 had knowledge of or knowingly participated in any conduct for which the licensee was
11 disciplined, Joel Abergel shall be prohibited from serving as a manager, administrator, owner,
12 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
13 Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is
14 reinstated if it is revoked.

15 **DISCIPLINE CONSIDERATIONS**

16 50. To determine the degree of discipline, if any, to be imposed on Respondent Abergel,
17 Complainant alleges that on or about October 31, 2007, the Board of Pharmacy issued a Citation
18 to Respondent Abergel in Case No. CI 2007 34523 in the amount of \$4,000.00 for violating
19 California Code of Regulations, title 16, section 1714, subdivision (d) [theft policy]. That
20 Citation is now final and is incorporated by reference as if fully set forth.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Permit Number PHY 50146 issued to The
25 Druggist, Inc.;

26 2. Revoking or suspending Pharmacist License Number RPH 41192 issued to Joel
27 Abergel aka Joelle Abergel;

28

1 3. Prohibiting The Druggist Inc. from serving as a manager, administrator, owner,
2 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
3 Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is
4 reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

5 4. Prohibiting Joel Abergel from serving as a manager, administrator, owner, member,
6 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
7 PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if
8 Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

9 5. Ordering The Druggist, Inc. and Joel Abergel aka Joelle Abergel to pay the Board of
10 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3; and

12 6. Taking such other and further action as deemed necessary and proper.

14 DATED: April 9, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

18 LA2014512855
19 52580243.docx

20
21
22
23
24
25
26
27
28

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2643
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 5321

13 **THE DRUGGIST, INC.,**
14 **JOEL ABERGEL, OWNER**
15 **27867 Smyth Drive**
16 **Valencia, CA 91355**

OAH No. 2017120806

17 **Pharmacy Permit No. PHY 50146,**

SECOND AMENDED ACCUSATION

18 **and**

19 **JOEL ABERGEL AKA JOELLE**
20 **ABERGEL**
21 **23905 Lakeside Road**
22 **Santa Clarita, CA 91355**

23 **Pharmacist License No. RPH 41192**

24 Respondents.

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.

2. On or about June 10, 2010, the Board of Pharmacy issued Pharmacy Permit Number
PHY 50146 to The Druggist Inc. to do business as The Druggist Inc. ("Respondent Pharmacy").

1 Joel Abergel has been the owner, President, and Pharmacist-in-Charge of Respondent Pharmacy
2 since June 10, 2019. The Pharmacy Permit was in full force and effect at all times relevant to the
3 charges brought herein and will expire on June 1, 2016, unless renewed.

4 3. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License
5 Number RPH 41192 to Joel Abergel aka Joelle Abergel ("Respondent Abergel"). The Pharmacist
6 License was in full force and effect at all times relevant to the charges brought herein and will
7 expire on April 30, 2019, unless renewed.

8 JURISDICTION

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

12 5. **Section 4300.1** of the Code states:

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

18 6. **Section 4300** of the Code states, in pertinent part:

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

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

23 "(1) Suspending judgment.

24 "(2) Placing him or her upon probation.

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

26 "(4) Revoking his or her license.

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

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency. "

3 9. **Section 4307**, subdivision (a), of the Code states, in pertinent part:

4 (a) Any person who has been denied a license or whose license has been revoked or is
5 under suspension, or who has failed to renew his or her license while it was under suspension, or
6 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
7 any other person with management or control of any partnership, corporation, trust, firm, or
8 association whose application for a license has been denied or revoked, is under suspension or has
9 been placed on probation, and while acting as the manager, administrator, owner, member,
10 officer, director, associate, partner, or any other person with management or control had
11 knowledge of or knowingly participated in any conduct for which the license was denied,
12 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
13 administrator, owner, member, officer, director, associate, partner, or in any other position with
14 management or control of a licensee as follows:

15 (1) Where a probationary license is issued or where an existing license is placed on
16 probation, this prohibition shall remain in effect for a period not to exceed five years.

17 (2) Where the license is denied or revoked, the prohibition shall continue until the
18 license is issued or reinstated.

19 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
20 other person with management or control of a license" as used in this section and Section 4308,
21 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

22 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
23 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
24 However, no order may be issued in that case except as to a person who is named in the caption,
25 as to whom the pleading alleges the applicability of this section, and where the person has been
26 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
27 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
28

1 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
2 of law.

3 10. **Section 4332**, subdivision (a), of the Code states, in pertinent part:

4 "Any person who fails, neglects, or refuses to maintain the records required by Section
5 4081 or who, when called upon by an authorized officer of a member of the board, fails, neglects,
6 or refuses to produce or provide the records within a reasonable time, or who willfully produces
7 or furnishes records that are false, is guilty of a misdemeanor.

8 11. **Health and Safety Code section 11153** states, in pertinent part:

9 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
10 purpose by an individual practitioner acting in the usual course of his or her professional practice.
11 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
12 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
13 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
14 an order purporting to be a prescription which is issued not in the usual course of professional
15 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
16 controlled substances, which is issued not in the course of professional treatment or as part of an
17 authorized narcotic treatment program, for the purpose of providing the user with controlled
18 substances, sufficient to keep him or her comfortable by maintaining customary use."

19 12. **California Code of Regulations, title 16, section 1715.6** states, "[t]he owner shall
20 report to the Board within thirty (30) days of discovery of any loss of the controlled substances,
21 including their amounts and strengths."

22 13. **California Code of Regulations, title 16, section 1718** states:

23 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
24 Code shall be considered to include complete accountability for all dangerous drugs handled by
25 every licensee enumerated in Sections 4081 and 4332.

26 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
27 available for inspection upon request for at least 3 years after the date of the inventory."

28 14. **California Code of Regulations, title 16, section 1761** states:

1 (a) No pharmacist shall compound or dispense any prescription which contains any
2 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
3 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
4 validate the prescription.

5 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
6 a controlled substance prescription where the pharmacist knows or has objective reason to know
7 that said prescription was not issued for a legitimate medical purpose."

8 15. **Code of Federal Regulations, title 21, section 1304.04**, subdivision (h), states in
9 pertinent part:

10 (h) Each registered pharmacy shall maintain the inventories and records of controlled
11 substances as follows:

12 (1) Inventories and records of all controlled substances listed in Schedule I and II
13 shall be maintained separately from all other records of the pharmacy.

14 (2) Paper prescriptions for Schedule II controlled substances shall be maintained at
15 the registered location in a separate prescription file.

16 (3) Inventories and records of Schedules III, IV, and V controlled substances shall be
17 maintained either separately from all other records of the pharmacy or in such form that the
18 information required is readily retrievable from ordinary business records of the pharmacy."

19 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

20 16. **Hydromorphone, the generic name for Dilaudid**, is a Schedule II controlled
21 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J) and is a
22 dangerous drug pursuant to Code section 4022.

23 17. **Hydrocodone and acetaminophen ("hydrocodone/apap"), the generic name for**
24 **Norco and Lortab**, is a Schedule III controlled substance pursuant to Health and Safety Code
25 section 11056, subdivision (e)(4) and is a dangerous drug pursuant to Code section 4022. As of
26 October 6, 2014, hydrocodone/apap became a Schedule II controlled substance pursuant to
27 United States Code, title 21, section 812.
28

1 secured 993 of these prescriptions. Inspector R.V. asked Respondent Abergel do a "Stock on
2 Hand" inventory on brand and generic forms of Dilaudid 4mg, Oxycodone 30mg and Endocet
3 10/325. He requested the last DEA Biennial Inventory.

4 23. Inspector R.V. asked Respondent Abergel if Respondent Druggist had any break-ins
5 or losses. Respondent Abergel provided a "Report of Theft or Loss of Controlled Substances"
6 and the card of the investigator from the local sheriff's department. However, there were no loss
7 of drugs Inspector R.V. was going to audit on the loss report. Respondent Abergel further
8 informed Inspector R.V. that he did not report the loss to the Board.

9 24. Inspector A.N. obtained prescription labels that were not in compliance with
10 pharmacy law and in addition a corrected form that was compliant. Inspector R.V. filled out an
11 Inspection Report, noted the discussed items and requested the following:

- 12 • All invoices from all wholesalers for brand and generic forms Dilaudid 4mg,
13 oxycontin 30mg, and percocet10/325 from 7/8/2010 to 12/18/2012 to be sent to
14 Inspector R.V..
- 15 • Drug utilization report for brand and generic forms of Dilaudid 4mg, Oxycontin
16 30mg and Percocet 10/325 from 7/8/2010 - 12/18/2012 to include name and
17 addresses of patients and doctors, RX no., date, drug, quantity, days supply and
18 method of payment.
- 19 • Control substance log (daily logs) for all control substances from 7/8/2010 to
20 12/18/2012 to include names and addresses of patients and doctors, rx no, rx date,
21 drug, quantity, days' supply and method of payment to be in excel format.
- 22 • All DUR and logs to be on separate cd's or flash drives (2 copies of each) to be
23 sent, and all invoices from all wholesalers for brand and generic forms for
24 Dilaudid 4mg, to Inspector R.V., PO Box 594, San Clemente, CA 92674 by
25 12/22/2012.

26 25. Inspector R.V. issued Official Receipt # 200191 for the secured documents, and the
27 inspectors left.

28

1 26. On March 28, 2013, Inspector R.V. sent out letters to 5 patients of Respondent
2 Druggist requesting an interview. All 5 letters were returned as undeliverable (Not included in
3 report, but held in evidence).

4 27. On or about January 4, 2013, Inspector R.V. received the requested documents from
5 The Druggist which consisted of:

- 6 • Cover letter from Respondent Abergel and his wife (Exhibit 8, 4 pages). Respondent
7 Abergel stated the doctor's office asked him to deliver the prescriptions to their office
8 after a driver delivered them to the pharmacy. Later it was changed to a driver delivering
9 the prescription documents and then picking up the filled prescriptions the next day.
10 Respondent Abergel stated his wife called the DEA and the state Board.
- 11 • Mrs. Abergel stated she and her husband met with the Pain Management Physicians in
12 Van Nuys and they were asked to deliver prescriptions to their office. The wife then called
13 the DEA and the state board and was informed nothing prohibited delivering to a doctor's
14 office.
- 15 • Last page of the document was the corrections they made as a result of the inspection.
- 16 • I received the flash drives with DURs for Dilaudid 4mg, oxycodone 30 and Endocet 10/325
17 (not included in report, but held in evidence).
- 18 • The Druggist also provided invoices from H.D. Smith and Valley Wholesale for the 3
19 drugs.

20 28. Inspector R.V. printed out the DUR's from the flash drive provided by Respondent
21 Druggist. That document showed Respondent Druggist dispensed 16,640 tablets of Dilaudid 4mg
22 and 2,575 tablets of generic Hydromorphone 4mg for a total of 19,215 tablets; 249,152 tablets of
23 Oxycodone 30mg and 53,516 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

24 29. Inspector R.V. entered the invoices provided by Respondent Druggist from H.D.
25 Smith and Valley Wholesale for the 3 drugs onto a spread sheet which showed Respondent
26 Druggist purchased 18,000 tablets of Dilaudid 4mg, 224,500 tablets of Oxycodone 30mg and
27 50,400 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

28

1 30. On June 30, 2014 and July 24, 2014, Inspector R.V. forwarded letters to H.D. Smith
2 and Valley Wholesale requesting records of sales to Respondent Druggist for Dilaudid 4mg brand
3 and generic, Oxycodone 30mg and Endocet 10/325 from 7/8/2010 – 12/18/2012. Her further sent
4 another letter to H.D. Smith on July 29, 2014 requesting additional information.

5 31. On or about July 20, 2014, Inspector R.V. received the requested records from Valley
6 Wholesale, in Excel format, which showed Respondent Druggist purchased 15, 100 tablets of
7 Dilaudid 4mg, 44,500 tablets of Endocet 10/325, 2,400 tablets of Hydromorphone 4mg, 54,500
8 tablets of Oxycodone 30mg (bottles of 100), 90,500 tablets of Oxycodone 30mg (bottles of 500),
9 an additional 55,700 tablets of Oxycodone 30mg (Mallinckrodt) and 400 Oxycodone
10 Acetaminophen 10/325.

11 32. On or about July 29, 2014, Inspector R.V. received the reply from H.D. Smith in
12 Excel format which showed Respondent Druggist purchased 19,300 tablets of Dilaudid 4mg,
13 248,800 tablets of Oxycodone 30mg and 54,100 tablets of Endocet 10/325.

14 33. When compared to the invoices provided by Respondent Druggist, it revealed that
15 Respondent Druggist did not provide invoices for 800 tablets of Dilaudid 4mg, 24,300 tablets of
16 oxycodone 30mg and 3,700 tablets of Endocet 10/325.

17 34. Using the DEA inventory of 7/8/2010 as the initial amount, the invoices provided by
18 the wholesalers as the amount ordered, the DUR's provided by Respondent Druggist as the
19 amount dispensed and the Stock on Hand inventory as the ending inventory, Inspector R.V.
20 performed a "Selected Drug Audit Summary" which Respondent Druggist did not account for 74
21 Dilaudid 4mg, 164 Oxycodone 30mg and 584 Endocet 10/325.

22 35. Examination of the 993 prescription secured from Respondent Druggist showed the
23 majority were written by:

- 24 • Dr. C. A., located in Inglewood
- 25 • Dr. R. C., located in Studio City
- 26 • Dr. B. O., located at 7035 Reseda Blvd., Reseda
- 27 • Dr. J. G., located at 7035 Reseda Blvd., Reseda
- 28 • Dr. R. L., located at 7035 Reseda Blvd., Reseda

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

- Dr. R. S., located at 7035 Reseda Blvd., Reseda
 - Dr. H. S., located in Los Angeles
36. Inspector R.V. included samples of the secured prescriptions from The Druggist:
- On April 29, 2011, there were 12 prescriptions from Drs. B.O. and Dr. J.G. for Endocet 10/325, Oxycodone 30mg and Dilaudid 4mg. Patients came from Los Angeles, Canoga Park, Burbank, N. Hollywood, and Panorama City. The prescription numbers were in sequence showing the patients or prescriptions came in the same time.
 - On May 6, 2011, there were 14 prescriptions from Drs. J.G., R.L., and B.O. for Oxycodone 30mg, Endocet 10/325, and Dilaudid 4mg. Patients were from Los Angeles, Beverly Hills, and North Hollywood. Prescriptions were in sequence.
 - On June 6, 2011, there were 20 prescriptions from Drs. J.G., R.L., B.O. for Oxycodone 30mg and Endocet 10/325. Patients were from S. Los Angeles, Rialto, Hacienda Heights, Gardena, California City, Venice and Moreno Valley. Prescription numbers were in sequence.
 - On July 21, 2011, there were 17 prescriptions from Drs. B.O., J.G., R.L., and R.S. (all same office address) for Endocet 10/325, Lortabs, Hydrocodone/apap 10/325, Oxycodone 30mg, Norco, and Dilaudid 4mg. Patients came from S. Los Angeles, N. Hollywood, Sylmar, S. Pasadena, Mission Viejo, Palm Springs and Norwalk. Prescriptions were in sequence.
 - On August 16, 2011, there were 16 prescriptions from Drs. J.G., R.L., R.S., and B.O. for oxycodone 30mg, Endocet 10/325 and Dilaudid 4mg. Patients were from S. Los Angeles, Inglewood, Santa Monica, Pomona, Compton, Manhattan Beach, Paramount, and Glendale. Prescriptions were in sequence.
 - On January 30, 2012, there were 12 prescriptions from Drs. C.A. and H.S. for Oxycodone 30mg. Each doctor had the same dosage for his patient. The patients came from Compton, S. Los Angeles, Northridge, Long Beach, Sylmar, Mission Hills and Inglewood. The prescription numbers were in sequence.

- 1 • On February 2, 2012, there were 11 prescriptions from Dr. C.A. for Oxycodone
- 2 30mg. All of the patients had the same dosage.
- 3 • On February 9, 2012, there were 10 prescriptions from Dr. R.C. for Oxycodone
- 4 30mg. Patients were from Los Angeles, Inglewood and Sylmar. The prescription
- 5 numbers were in sequence.

6 37. In summary, Respondent Druggist filled these prescriptions when there too many red
7 flags for the pharmacist not to notice that these prescriptions were not for a legitimate medical
8 purpose:

- 9 • Doctors were out of area and patients were as far as Palm Springs.
- 10 • Patients were given the same medication and the same dosage.
- 11 • Drivers provided no identification and no proof they were working for the
- 12 doctor.
- 13 • The Druggist did not obtain CURES reports for these patients to determine if
- 14 they were doctor shopping, obtaining prescriptions from multiple pharmacies.

15 38. Inspector R.V. obtained some patient profiles (Respondent Druggist DUR's) and
16 Patient Activity Reports (PAR) from CURES on patients of Respondent Druggist which showed:

- 17 • Patient profile for R.A located in West Hollywood showed from 5/1/2012 to
- 18 7/24/2012 obtained prescriptions for Oxycodone 30mg from 3 doctors as far away as
- 19 Corona. The PAR showed R.A. obtained prescriptions for Oxycodone from 8
- 20 doctors and 7 pharmacies within a year.
- 21 • Respondent Druggist's own patient profile for R.A. #2 showed in 4 months he had
- 22 obtained Oxycodone 30mg from 4 doctors from Woodland Hills to Corona.
- 23 • PAR for A.C. showed he obtained Oxycodone 30mg from 3 pharmacies and 4 doctors
- 24 within 11 months.
- 25 • PAR for D.G. living in Long Beach showed he obtained Oxycodone and other
- 26 controlled substances from 7 pharmacies (from Long Beach, Ontario to Valencia)
- 27 and from 7 doctors.
- 28

- 1 • PAR for S.H. living in Los Angeles showed the patient obtained Oxycodone 30mg
2 from 9 pharmacies from Los Angeles to Desert Hot Springs and 9 doctors from Los
3 Angeles to Corona, while obtaining Oxycodone 30mg from Respondent Druggist.
- 4 • Respondent Druggist's own patient profile for H.L. living in Lancaster, had Rx #
5 60232, dated 12/1/2011 for 120 Oxycodone 30mg (30 days' supply) by Dr. C. and
6 Rx # 60925, dated 12/20/2011 for 180 oxycodone (30 DS) by Dr. A., 11 days early.
7 The PAR for H.L. shows the patient went to 9 pharmacies from Los Angeles to
8 Lancaster and 7 doctors from Los Angeles to Corona while obtaining prescriptions
9 from Respondent Druggist.
- 10 • The PAR for A.J. living in Riverside shows the patient went to 5 pharmacies from
11 Long Beach, Gardena to Valencia and to 4 doctors from Long Beach, Panorama
12 City to Los Angeles while obtaining controlled substances from Respondent
13 Druggist.
- 14 • The PAR for B.M. (Exhibit 32, 1 page) shows the patient had Rx # 541124, dated
15 1/6/2012 for 180 oxycodone 30mg (30ds) at another pharmacy by Dr. A.. The
16 Druggist filled Rx # 62258, dated 1/28/2012 for 180 Oxycodone 30mg by Dr. M.S.,
17 8 days early. The patient had Rx # 54424, dated 3/2/2012 for 180 Oxycodone 30mg
18 (30 DS) at another pharmacy by Dr. A. Respondent Druggist filled Rx # 64202,
19 dated 3/12/2012 for 150 Oxycodone 30mg by Dr. S., 20 days early.
- 20 • The Par for N.E. shows the patient went to 4 pharmacies and 6 doctors while
21 obtaining prescriptions for controlled substances while obtaining prescriptions from
22 Respondent Druggist.
- 23 • The PAR for J.O., living in N. Hollywood, had Rx # 348972, written by Dr. G. dated
24 1/7/2011 for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
25 Respondent Druggist filled Rx # 46862, dated 1/10/2011, written by Dr. B. for 100
26 Oxycodone 30 mg (20DS), 23 days early. J.O. had Rx # 353146, dated 2/11/2011,
27 written by Dr. G. for 90 Oxycodone 30mg (30DS). Respondent Druggist filled Rx
28 48699, dated 2/21/2011, written by Dr. B. for 100 Oxycodone 30mg, 20 days early.

1 J.O. had Rx # 49276, dated 3/7/2011, written by Dr. B. for 100 Oxycodone 30mg
2 (20DS) dispensed at Respondent Druggist. J.O had Rx # 356523, dated 3/11/2011,
3 written by Dr. G. for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
4 J.O. now has 50 day supply of Oxycodone 30mg at home. Respondent Druggist
5 filled Rx # 49789, dated 3/21/2011, written by Dr. B. for 100 Oxycodone 30mg
6 (20DS), 40 days early. Further, Respondent Druggist filled Rx # 50328, dated
7 4/4/2011, written by Dr. Dr. B. for 100 Oxycodone 30mg, over 7 days early. J.O.
8 had Rx # 274305, dated 1/31/2012, written by Dr. E. for 150 Oxycodone 30mg
9 (25DS). Respondent Druggist filled Rx # 62922, dated 2/13/2012, written by Dr. G.
10 for 60 oxycodone 30mg. 12 days early. J.O went to 9 pharmacies from Valencia,
11 Lancaster to Panorama City and 7 doctors while obtaining prescriptions for
12 controlled substances from Respondent Druggist.

13 39. Had Respondent Druggist obtained PAR's and reviewed their own patient profiles for
14 these patients they would have noticed the multiple pharmacies, multiple doctors and early refills.

15 40. On August 14, 2014, Inspector R.V. issued a Written Notice for violation of
16 California Code of Regulation sections 1761(a), 1715.6, 1718; Business and Professions section
17 4081(a) and Health and Safety Code section 11153(a).

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Filling of Erroneous or Uncertain Prescriptions and Failure to Assume Co-Responsibility** 20 **in Legitimacy of a Prescription)**

21 41. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
22 under California Code of Regulations section 1761, subd. (a) in conjunction with Health and
23 Safety Code section 11153, subd (a), and Bus. Prof. C. §§4113, 4156, 4301, 4301(d), 4301 (j),
24 4301(o), 4302, 4035 and 4306.5, in conjunction with Health & Safety C. §11153, subdivision (a),
25 and pursuant to Vermont & 110th Medical Arts v. Board of Pharmacy (1981) 125 Cal.App.3d 19
26 (hereinafter referred as Vermont), pursuant to Sternberg v. Board of Pharmacy (2015) 239 Cal.
27 App. 4th 1159 (hereinafter referred as Sternberg), and pursuant to the Board of Pharmacy's
28 Precedential Decision No. 2013-01 (Board of Pharmacy v. Pacifica Pharmacy Corporation, et

1 al., (2012) Case No. 3802, OAH No. 2011010644) (hereinafter referred as Pacifica) on the
2 grounds of unprofessional conduct because Respondents failed to exercise or implement their best
3 professional judgment or their corresponding responsibility to ensure that controlled substances
4 are dispensed for a legitimate medical purpose, in that Respondents compounded or dispensed
5 prescriptions which contain significant error, omission, irregularity, uncertainty, ambiguity or
6 alteration. Respondents failed to contact the prescriber to obtain the information needed to
7 validate the prescription. Even after conferring with the prescriber, a pharmacist shall not
8 compound or dispense a controlled substance prescription where the pharmacist knows or has
9 objective reason to know that said prescription was not issued for a legitimate medical purpose
10 and in filling these prescriptions. Respondent Druggist filled prescriptions for habitual doctor
11 shoppers and erroneous/uncertain prescriptions as set forth in paragraphs 56 and 57. J.O went to
12 9 pharmacies from Valencia, Lancaster to Panorama City and 7 doctors while obtaining
13 prescriptions for controlled substances from The Druggist. Filling prescriptions for controlled
14 substances for patients from all areas of Southern California coming in at the same time and also
15 from doctors out of the area. These prescriptions for controlled substance were filled and
16 provided to un-identified, unauthorized drivers without confirming with the patient.

17 42. Complainant refers to and by this reference incorporates the allegations set forth
18 above in paragraphs 21-40, inclusive, as though set forth fully.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to Keep Complete Accountability)**

21 43. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
22 under California Code of Regulations section 1718, in conjunction with Code sections 4081 and
23 4332, and California Federal Regulations, Title 21, section 1304, and Bus. Prof. C. §4113, and
24 Stenberg, in that based on records from 7/8/2010 – 12/18/2012, Respondents failed to account for
25 74 tablets of Dilaudid 4mg, 164 tablets of Oxycodone 30mg and 584 tablets of Endocet 10/325.

26 44. Complainant refers to and by this reference incorporates the allegations set forth
27 above in paragraphs 21-40, inclusive, as though set forth fully.

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 Pharmacy Permit Number PHY 50146 issued to The Druggist, Inc.;

2. Revoking or suspending Pharmacist License Number RPH 41192 issued to Joel Abergel aka Joelle Abergel;

3. Prohibiting The Druggist Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

4. Prohibiting Joel Abergel from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

5. Ordering The Druggist, Inc. and Joel Abergel aka Joelle Abergel 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

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

DATED: 8/17/18 Virginia Herold

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

LA2014512855
52580243.docx

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2643
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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 No. 5321

12 **THE DRUGGIST, INC.,**
13 **JOEL ABERGEL, OWNER**
27867 Smyth Drive
14 **Valencia, CA 91355**

FIRST AMENDED ACCUSATION

15 **Pharmacy Permit No. PHY 50146,**

16 **and**

17 **JOEL ABERGEL AKA JOELLE**
18 **ABERGEL**
23905 Lakeside Road
19 **Santa Clarita, CA 91355**

20 **Pharmacist License No. RPH 41192**

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about June 10, 2010, the Board of Pharmacy issued Pharmacy Permit Number
28 PHY 50146 to The Druggist Inc. to do business as The Druggist Inc. ("Respondent Pharmacy").

1 Joel Abergel has been the owner, President, and Pharmacist-in-Charge of Respondent Pharmacy
2 since June 10, 2010. The Pharmacy Permit was in full force and effect at all times relevant to the
3 charges brought herein and will expire on June 1, 2016, unless renewed.

4 3. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License
5 Number RPH 41192 to Joel Abergel aka Joelle Abergel ("Respondent Abergel"). The Pharmacist
6 License was in full force and effect at all times relevant to the charges brought herein and will
7 expire on April 30, 2017, unless renewed.

8 JURISDICTION

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

12 5. **Section 4300.1** of the Code states:

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

18 6. **Section 4300** of the Code states, in pertinent part:

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

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

23 "(1) Suspending judgment.

24 "(2) Placing him or her upon probation.

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

26 "(4) Revoking his or her license.

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

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

....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

STATUTES AND REGULATIONS

7. **Section 4081**, subdivision (a) of the Code states:

"(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution; or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

8. **Section 4301** of the Code states, in pertinent part:

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

....

"(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

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency. "

3 9. **Section 4307**, subdivision (a), of the Code states, in pertinent part:

4 (a) Any person who has been denied a license or whose license has been revoked or is
5 under suspension, or who has failed to renew his or her license while it was under suspension, or
6 who has been a manager, administrator, owner, member, officer, director, associate, partner, or
7 any other person with management or control of any partnership, corporation, trust, firm, or
8 association whose application for a license has been denied or revoked, is under suspension or has
9 been placed on probation, and while acting as the manager, administrator, owner, member,
10 officer, director, associate, partner, or any other person with management or control had
11 knowledge of or knowingly participated in any conduct for which the license was denied,
12 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,
13 administrator, owner, member, officer, director, associate, partner, or in any other position with
14 management or control of a licensee as follows:

15 (1) Where a probationary license is issued or where an existing license is placed on
16 probation, this prohibition shall remain in effect for a period not to exceed five years.

17 (2) Where the license is denied or revoked, the prohibition shall continue until the
18 license is issued or reinstated.

19 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any
20 other person with management or control of a license" as used in this section and Section 4308,
21 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

22 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
23 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
24 However, no order may be issued in that case except as to a person who is named in the caption,
25 as to whom the pleading alleges the applicability of this section, and where the person has been
26 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
27 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
28

1 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
2 of law.

3 10. **Section 4332**, subdivision (a), of the Code states, in pertinent part:

4 "Any person who fails, neglects, or refuses to maintain the records required by Section
5 4081 or who, when called upon by an authorized officer of a member of the board, fails, neglects,
6 or refuses to produce or provide the records within a reasonable time, or who willfully produces
7 or furnishes records that are false, is guilty of a misdemeanor.

8 11. **Health and Safety Code section 11153** states, in pertinent part:

9 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
10 purpose by an individual practitioner acting in the usual course of his or her professional practice.
11 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
12 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
13 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
14 an order purporting to be a prescription which is issued not in the usual course of professional
15 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
16 controlled substances, which is issued not in the course of professional treatment or as part of an
17 authorized narcotic treatment program, for the purpose of providing the user with controlled
18 substances, sufficient to keep him or her comfortable by maintaining customary use."

19 12. **California Code of Regulations, title 16, section 1715.6** states, "[t]he owner shall
20 report to the Board within thirty (30) days of discovery of any loss of the controlled substances,
21 including their amounts and strengths."

22 13. California Code of Regulations, title 16, **section 1718** states:

23 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
24 Code shall be considered to include complete accountability for all dangerous drugs handled by
25 every licensee enumerated in Sections 4081 and 4332.

26 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
27 available for inspection upon request for at least 3 years after the date of the inventory."

28 14. California Code of Regulations, title 16, **section 1761** states:

1 "(a) No pharmacist shall compound or dispense any prescription which contains any
2 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
3 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
4 validate the prescription.

5 "(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
6 a controlled substance prescription where the pharmacist knows or has objective reason to know
7 that said prescription was not issued for a legitimate medical purpose."

8 15. **Code of Federal Regulations, title 21, section 1304.04**, subdivision (h), states in
9 pertinent part:

10 "(h) Each registered pharmacy shall maintain the inventories and records of controlled
11 substances as follows:

12 "(1) Inventories and records of all controlled substances listed in Schedule I and II
13 shall be maintained separately from all other records of the pharmacy.

14 "(2) Paper prescriptions for Schedule II controlled substances shall be maintained at
15 the registered location in a separate prescription file.

16 "(3) Inventories and records of Schedules III, IV, and V controlled substances shall be
17 maintained either separately from all other records of the pharmacy or in such form that the
18 information required is readily retrievable from ordinary business records of the pharmacy."

19 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

20 16. **Hydromorphone, the generic name for Dilaudid**, is a Schedule II controlled
21 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J) and is a
22 dangerous drug pursuant to Code section 4022.

23 17. **Hydrocodone and acetaminophen ("hydrocodone/apap")**, the generic name for
24 **Norco and Lortab**, is a Schedule III controlled substance pursuant to Health and Safety Code
25 section 11056, subdivision (e)(4) and is a dangerous drug pursuant to Code section 4022. As of
26 October 6, 2014, hydrocodone/apap became a Schedule II controlled substance pursuant to
27 United States Code, title 21, section 812.
28

1 secured 993 of these prescriptions. Inspector R.V. asked Respondent Abergel do a "Stock on
2 Hand" inventory on brand and generic forms of Dilaudid 4mg, Oxycodone 30mg and Endocet
3 10/325. He requested the last DEA Biennial Inventory.

4 23. Inspector R.V. asked Respondent Abergel if Respondent Druggist had any break-ins
5 or losses. Respondent Abergel provided a "Report of Theft or Loss of Controlled Substances"
6 and the card of the investigator from the local sheriff's department. However, there were no loss
7 of drugs Inspector R.V. was going to audit on the loss report. Respondent Abergel further
8 informed Inspector R.V. that he did not report the loss to the Board.

9 24. Inspector A.N. obtained prescription labels that were not in compliance with
10 pharmacy law and in addition a corrected form that was compliant. Inspector R.V. filled out an
11 Inspection Report, noted the discussed items and requested the following:

- 12 • All invoices from all wholesalers for brand and generic forms Dilaudid 4mg,
13 oxycontin 30mg, and percocet10/325 from 7/8/2010 to 12/18/2012 to be sent to
14 Inspector R.V..
- 15 • Drug utilization report for brand and generic forms of Dilaudid 4mg, Oxycontin
16 30mg and Percocet 10/325 from 7/8/2010 - 12/18/2012 to include name and
17 addresses of patients and doctors, RX no., date, drug, quantity, days supply and
18 method of payment.
- 19 • Control substance log (daily logs) for all control substances from 7/8/2010 to
20 12/18/2012 to include names and addresses of patients and doctors, rx no, rx date,
21 drug, quantity, days' supply and method of payment to be in excel format.
- 22 • All DUR and logs to be on separate cd's or flash drives (2 copies of each) to be
23 sent, and all invoices from all wholesalers for brand and generic forms for
24 Dilaudid 4mg, to Inspector R.V., PO Box 594, San Clemente, CA 92674 by
25 12/22/2012.

26 25. Inspector R.V. issued Official Receipt # 200191 for the secured documents, and the
27 inspectors left.

28

1 26. On March 28, 2013, Inspector R.V. sent out letters to 5 patients of Respondent
2 Druggist requesting an interview. All 5 letters were returned as undeliverable (Not included in
3 report, but held in evidence).

4 27. On or about January 4, 2013, Inspector R.V. received the requested documents from
5 The Druggist which consisted of:

- 6 • Cover letter from Respondent Abergel and his wife (Exhibit 8, 4 pages). Respondent
7 Abergel stated the doctor's office asked him to deliver the prescriptions to their office
8 after a driver delivered them to the pharmacy. Later it was changed to a driver delivering
9 the prescription documents and then picking up the filled prescriptions the next day.
10 Respondent Abergel stated his wife called the DEA and the state Board.
- 11 • Mrs. Abergel stated she and her husband met with the Pain Management Physicians in
12 Van Nuys and they were asked to deliver prescriptions to their office. The wife then called
13 the DEA and the state board and was informed nothing prohibited delivering to a doctor's
14 office.
- 15 • Last page of the document was the corrections they made as a result of the inspection.
- 16 • I received the flash drives with DURs for Dilaudid 4mg, oxycodone 30 and Endocet 10/325
17 (not included in report, but held in evidence).
- 18 • The Druggist also provided invoices from H.D. Smith and Valley Wholesale for the 3
19 drugs.

20 28. Inspector R.V. printed out the DUR's from the flash drive provided by Respondent
21 Druggist. That document showed Respondent Druggist dispensed 16,640 tablets of Dilaudid 4mg
22 and 2,575 tablets of generic Hydromorphone 4mg for a total of 19,215 tablets; 249,152 tablets of
23 Oxycodone 30mg and 53,516 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

24 29. Inspector R.V. entered the invoices provided by Respondent Druggist from H.D.
25 Smith and Valley Wholesale for the 3 drugs onto a spread sheet which showed Respondent
26 Druggist purchased 18,000 tablets of Dilaudid 4mg, 224,500 tablets of Oxycodone 30mg and
27 50,400 tablets of Endocet 10/325 from 7/8/2010 to 12/18/2012.

28

1 30. On June 30, 2014 and July 24, 2014, Inspector R.V. forwarded letters to H.D. Smith
2 and Valley Wholesale requesting records of sales to Respondent Druggist for Dilaudid 4mg brand
3 and generic, Oxycodone 30mg and Endocet 10/325 from 7/8/2010 – 12/18/2012. Her further sent
4 another letter to H.D. Smith on July 29, 2014 requesting additional information.

5 31. On or about July 20, 2014, Inspector R.V. received the requested records from Valley
6 Wholesale, in Excel format, which showed Respondent Druggist purchased 15, 100 tablets of
7 Dilaudid 4mg, 44,500 tablets of Endocet 10/325, 2,400 tablets of Hydromorphone 4mg, 54,500
8 tablets of Oxycodone 30mg (bottles of 100), 90,500 tablets of Oxycodone 30mg (bottles of 500),
9 an additional 55,700 tablets of Oxycodone 30mg (Mallinckrodt) and 400 Oxycodone
10 Acetaminophen 10/325.

11 32. On or about July 29, 2014, Inspector R.V. received the reply from H.D. Smith in
12 Excel format which showed Respondent Druggist purchased 19,300 tablets of Dilaudid 4mg,
13 248,800 tablets of Oxycodone 30mg and 54,100 tablets of Endocet 10/325.

14 33. When compared to the invoices provided by Respondent Druggist, it revealed that
15 Respondent Druggist did not provide invoices for 800 tablets of Dilaudid 4mg, 24,300 tablets of
16 oxycodone 30mg and 3,700 tablets of Endocet 10/325.

17 34. Using the DEA inventory of 7/8/2010 as the initial amount, the invoices provided by
18 the wholesalers as the amount ordered, the DUR's provided by Respondent Druggist as the
19 amount dispensed and the Stock on Hand inventory as the ending inventory, Inspector R.V.
20 performed a "Selected Drug Audit Summary" which Respondent Druggist did not account for 74
21 Dilaudid 4mg, 164 Oxycodone 30mg and 584 Endocet 10/325.

22 35. Examination of the 993 prescription secured from Respondent Druggist showed the
23 majority were written by:

- 24 • Dr. C. A., located in Inglewood
- 25 • Dr. R. C., located in Studio City
- 26 • Dr. B. O., located at 7035 Reseda Blvd., Reseda
- 27 • Dr. J. G., located at 7035 Reseda Blvd., Reseda
- 28 • Dr. R. L., located at 7035 Reseda Blvd., Reseda

- 1 • Dr. R. S., located at 7035 Reseda Blvd., Reseda
- 2 • Dr. H. S., located in Los Angeles
- 3 36. Inspector R.V. included samples of the secured prescriptions from The Druggist:
- 4 • On April 29, 2011, there were 12 prescriptions from Drs. B.O. and Dr. J.G. for
- 5 Endocet 10/325, Oxycodone 30mg and Dilaudid 4mg. Patients came from Los
- 6 Angeles, Canoga Park, Burbank, N. Hollywood, and Panorama City. The
- 7 prescription numbers were in sequence showing the patients or prescriptions came
- 8 in the same time.
- 9 • On May 6, 2011, there were 14 prescriptions from Drs. J.G., R.L., and B.O. for
- 10 Oxycodone 30mg, Endocet 10/325, and Dilaudid 4mg. Patients were from Los
- 11 Angeles, Beverly Hills, and North Hollywood. Prescriptions were in sequence.
- 12 • On June 6, 2011, there were 20 prescriptions from Drs. J.G., R.L., B.O. for
- 13 Oxycodone 30mg and Endocet 10/325. Patients were from S. Los Angeles, Rialto,
- 14 Hacienda Heights, Gardena, California City, Venice and Moreno Valley.
- 15 Prescription numbers were in sequence.
- 16 • On July 21, 2011, there were 17 prescriptions from Drs. B.O., J.G., R.L., and R.S. (all
- 17 same office address) for Endocet 10/325, Lortabs, Hydrocodone/apap 10/325,
- 18 Oxycodone 30mg, Norco, and Dilaudid 4mg. Patients came from S. Los Angeles,
- 19 N. Hollywood, Sylmar, S. Pasadena, Mission Viejo, Palm Springs and Norwalk.
- 20 Prescriptions were in sequence.
- 21 • On August 16, 2011, there were 16 prescriptions from Drs. J.G., R.L., R.S., and B.O.
- 22 for oxycodone 30mg, Endocet 10/325 and Dilaudid 4mg. Patients were from S. Los
- 23 Angeles, Inglewood, Santa Monica, Pomona, Compton, Manhattan Beach,
- 24 Paramount, and Glendale. Prescriptions were in sequence.
- 25 • On January 30, 2012, there were 12 prescriptions from Drs. C.A. and H.S. for
- 26 Oxycodone 30mg. Each doctor had the same dosage for his patient. The patients
- 27 came from Compton, S. Los Angeles, Northridge, Long Beach, Sylmar, Mission
- 28 Hills and Inglewood. The prescription numbers were in sequence.

- 1 • On February 2, 2012, there were 11 prescriptions from Dr. C.A. for Oxycodone
- 2 30mg. All of the patients had the same dosage.
- 3 • On February 9, 2012, there were 10 prescriptions from Dr. R.C. for Oxycodone
- 4 30mg. Patients were from Los Angeles, Inglewood and Sylmar. The prescription
- 5 numbers were in sequence.

6 37. In summary, Respondent Druggist filled these prescriptions when there too many red
7 flags for the pharmacist not to notice that these prescriptions were not for a legitimate medical
8 purpose:

- 9 • Doctors were out of area and patients were as far as Palm Springs.
- 10 • Patients were given the same medication and the same dosage.
- 11 • Drivers provided no identification and no proof they were working for the
- 12 doctor.
- 13 • The Druggist did not obtain CURES reports for these patients to determine if
- 14 they were doctor shopping, obtaining prescriptions from multiple pharmacies.

15 38. Inspector R.V. obtained some patient profiles (Respondent Druggist DUR's) and
16 Patient Activity Reports (PAR) from CURES on patients of Respondent Druggist which showed:

- 17 • Patient profile for R.A located in West Hollywood showed from 5/1/2012 to
- 18 7/24/2012 obtained prescriptions for Oxycodone 30mg from 3 doctors as far away as
- 19 Corona. The PAR showed R.A. obtained prescriptions for Oxycodone from 8
- 20 doctors and 7 pharmacies within a year.
- 21 • Respondent Druggist's own patient profile for R.A. #2 showed in 4 months he had
- 22 obtained Oxycodone 30mg from 4 doctors from Woodland Hills to Corona.
- 23 • PAR for A.C. showed he obtained Oxycodone 30mg from 3 pharmacies and 4 doctors
- 24 within 11 months.
- 25 • PAR for D.G. living in Long Beach showed he obtained Oxycodone and other
- 26 controlled substances from 7 pharmacies (from Long Beach, Ontario to Valencia)
- 27 and from 7 doctors.
- 28

- 1 • PAR for S.H. living in Los Angeles showed the patient obtained Oxycodone 30mg
2 from 9 pharmacies from Los Angeles to Desert Hot Springs and 9 doctors from Los
3 Angeles to Corona, while obtaining Oxycodone 30mg from Respondent Druggist.
- 4 • Respondent Druggist's own patient profile for H.L. living in Lancaster, had Rx #
5 60232, dated 12/1/2011 for 120 Oxycodone 30mg (30 days' supply) by Dr. C. and
6 Rx # 60925, dated 12/20/2011 for 180 oxycodone (30 DS) by Dr. A., 11 days early.
7 The PAR for H.L. shows the patient went to 9 pharmacies from Los Angeles to
8 Lancaster and 7 doctors from Los Angeles to Corona while obtaining prescriptions
9 from Respondent Druggist.
- 10 • The PAR for A.J. living in Riverside shows the patient went to 5 pharmacies from
11 Long Beach, Gardena to Valencia and to 4 doctors from Long Beach, Panorama
12 City to Los Angeles while obtaining controlled substances from Respondent
13 Druggist.
- 14 • The PAR for B.M. (Exhibit 32, 1 page) shows the patient had Rx # 541124, dated
15 1/6/2012 for 180 oxycodone 30mg (30ds) at another pharmacy by Dr. A.. The
16 Druggist filled Rx # 62258, dated 1/28/2012 for 180 Oxycodone 30mg by Dr. M.S.,
17 8 days early. The patient had Rx # 54424, dated 3/2/2012 for 180 Oxycodone 30mg
18 (30 DS) at another pharmacy by Dr. A. Respondent Druggist filled Rx # 64202,
19 dated 3/12/2012 for 150 Oxycodone 30mg by Dr. S., 20 days early.
- 20 • The Par for N.E. shows the patient went to 4 pharmacies and 6 doctors while
21 obtaining prescriptions for controlled substances while obtaining prescriptions from
22 Respondent Druggist.
- 23 • The PAR for J.O., living in N. Hollywood, had Rx # 348972, written by Dr. G. dated
24 1/7/2011 for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
25 Respondent Druggist filled Rx # 46862, dated 1/10/2011, written by Dr. B. for 100
26 Oxycodone 30 mg (20DS), 23 days early. J.O. had Rx # 353146, dated 2/11/2011,
27 written by Dr. G. for 90 Oxycodone 30mg (30DS). Respondent Druggist filled Rx
28 48699, dated 2/21/2011, written by Dr. B. for 100 Oxycodone 30mg, 20 days early.

1 J.O. had Rx # 49276, dated 3/7/2011, written by Dr. B. for 100 Oxycodone 30mg
2 (20DS) dispensed at Respondent Druggist. J.O had Rx # 356523, dated 3/11/2011,
3 written by Dr. G. for 90 Oxycodone 30mg (30DS) dispensed at another pharmacy.
4 J.O. now has 50 day supply of Oxycodone 30mg at home. Respondent Druggist
5 filled Rx # 49789, dated 3/21/2011, written by Dr. B. for 100 Oxycodone 30mg
6 (20DS), 40 days early. Further, Respondent Druggist filled Rx # 50328, dated
7 4/4/2011, written by Dr. Dr. B. for 100 Oxycodone 30mg, over 7 days early. J.O.
8 had Rx # 274305, dated 1/31/2012, written by Dr. E. for 150 Oxycodone 30mg
9 (25DS). Respondent Druggist filled Rx # 62922, dated 2/13/2012, written by Dr. G.
10 for 60 oxycodone 30mg. 12 days early. J.O went to 9 pharmacies from Valencia,
11 Lancaster to Panorama City and 7 doctors while obtaining prescriptions for
12 controlled substances from Respondent Druggist.

13 39. Had Respondent Druggist obtained PAR's and reviewed their own patient profiles for
14 these patients they would have noticed the multiple pharmacies, multiple doctors and early refills.

15 40. On August 14, 2014, Inspector R.V. issued a Written Notice for violation of
16 California Code of Regulation sections 1761(a), 1715.6, 1718; Business and Professions section
17 4081(a) and Health and Safety Code section 11153(a).

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Filling of Erroneous or Uncertain Prescriptions and Failure to Assume Co-Responsibility** 20 **in Legitimacy of a Prescription)**

21 41. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
22 under California Code of Regulations section 1761, subd. (a) in conjunction with Health and
23 Safety Code section 11153, subd. (a) in that Respondents compounded or dispensed prescriptions
24 which contain significant error, omission, irregularity, uncertainty, ambiguity or alteration.
25 Respondents failed to contact the prescriber to obtain the information needed to validate the
26 prescription. Even after conferring with the prescriber, a pharmacist shall not compound or
27 dispense a controlled substance prescription where the pharmacist knows or has objective reason
28 to know that said prescription was not issued for a legitimate medical purpose and in filling these

1 prescriptions. Respondent Druggist filled prescriptions for habitual doctor shoppers and
2 erroneous/uncertain prescriptions as set forth in paragraphs 56 and 57. J.O went to 9 pharmacies
3 from Valencia, Lancaster to Panorama City and 7 doctors while obtaining prescriptions for
4 controlled substances from The Druggist. Filling prescriptions for controlled substances for
5 patients from all areas of Southern California coming in at the same time and also from doctors
6 out of the area. These prescriptions for controlled substance were filled and provided to un-
7 identified, unauthorized drivers without confirming with the patient.

8 42. Complainant refers to and by this reference incorporates the allegations set forth
9 above in paragraphs 21-40, inclusive, as though set forth fully.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Keep Complete Accountability)**

12 43. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
13 under California Code of Regulations section 1718, in conjunction with Code sections 4081 and
14 4332, and California Federal Regulation, Title 21, Section 1304 in that based on records from
15 7/8/2010 – 12/18/2012, Respondents failed to account for 74 tablets of Dilaudid 4mg, 164 tablets
16 of Oxycodone 30mg and 584 tablets of Endocet 10/325.

17 44. Complainant refers to and by this reference incorporates the allegations set forth
18 above in paragraphs 21-40, inclusive, as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Notify Board of Loss of Controlled Substances)**

21 45. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
22 under California Code of Regulations section 1715.6 in that Respondents failed to report the loss
23 of 400 Hydrocodone/apap 5/500, 200 Hydrocodone/apap 7.5/750, 480 Hydrocodone/apap 10/650,
24 180 Hydrocodone/apap 10/325 and 260 Hydrocodone/apap 10/325 on 9/3/2012.

25 46. Complainant refers to and by this reference incorporates the allegations set forth
26 above in paragraphs 21-40, inclusive, as though set forth fully.

27 ///

28 ///

1 **OTHER MATTERS**

2 47. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
3 PHY 50146 issued to The Druggist Inc., The Druggist Inc. shall be prohibited from serving as a
4 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
5 five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy
6 Permit Number PHY 50146 is reinstated if it is revoked.

7 48. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
8 PHY 50146 issued to The Druggist Inc. while Joel Abergel has been an officer and owner and
9 had knowledge of or knowingly participated in any conduct for which the licensee was
10 disciplined, Joel Abergel shall be prohibited from serving as a manager, administrator, owner,
11 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
12 Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is
13 reinstated if it is revoked.

14 **DISCIPLINE CONSIDERATIONS**

15 49. To determine the degree of discipline, if any, to be imposed on Respondent Abergel,
16 Complainant alleges that on or about October 31, 2007, the Board of Pharmacy issued a Citation
17 to Respondent Abergel in Case No. CI 2007 34523 in the amount of \$4,000.00 for violating
18 California Code of Regulations, title 16, section 1714, subdivision (d) [theft policy]. That
19 Citation is now final and is incorporated by reference as if fully set forth.

20 **PRAYER**

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

- 23 1. Revoking or suspending Pharmacy Permit Number PHY 50146 issued to The
24 Druggist, Inc.;
- 25 2. Revoking or suspending Pharmacist License Number RPH 41192 issued to Joel
26 Abergel aka Joelle Abergel;
- 27 3. Prohibiting The Druggist Inc. from serving as a manager, administrator, owner,
28 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit

1 Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is
2 reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

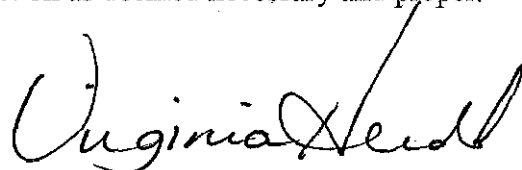
3 4. Prohibiting Joel Abergel from serving as a manager, administrator, owner, member,
4 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
5 PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if
6 Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

7 5. Ordering The Druggist, Inc. and Joel Abergel aka Joelle Abergel to pay the Board of
8 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3; and

10 6. Taking such other and further action as deemed necessary and proper.

11
12 DATED:

9/13/17



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

13
14
15
16
17 LA2014512855
52580243.docx

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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 No. 5321

12 **THE DRUGGIST, INC.,**
13 **JOEL ABERGEL, OWNER**
27867 Smyth Drive
14 Valencia, CA 91355

A C C U S A T I O N

15 Pharmacy Permit No. PHY 50146,

16 and

17 **JOEL ABERGEL AKA JOELLE**
18 **ABERGEL**
23905 Lakeside Road
19 Santa Clarita, CA 91355

20 Pharmacist License No. RPH 41192

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about June 10, 2010, the Board of Pharmacy issued Pharmacy Permit Number
28 PHY 50146 to The Druggist Inc. to do business as The Druggist Inc. ("Respondent Pharmacy").

1 Joel Abergel has been the owner, President, and Pharmacist-in-Charge of Respondent Pharmacy
2 since June 10, 2010. The Pharmacy Permit was in full force and effect at all times relevant to the
3 charges brought herein and will expire on June 1, 2016, unless renewed.

4 3. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License
5 Number RPH 41192 to Joel Abergel aka Joelle Abergel ("Respondent Abergel"). The Pharmacist
6 License was in full force and effect at all times relevant to the charges brought herein and will
7 expire on April 30, 2017, unless renewed.

8 JURISDICTION

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

12 5. Section 4300.1 of the Code states:

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

18 6. Section 4300 of the Code states, in pertinent part:

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

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

23 "(1) Suspending judgment.

24 "(2) Placing him or her upon probation.

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

26 "(4) Revoking his or her license.

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

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

....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

STATUTES AND REGULATIONS

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

"(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

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

"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:

....

"(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

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency. "

3 9. Section 4307, subdivision (a), of the Code states, in pertinent part:

4 "Any person who has been denied a license or whose license has been revoked or is under
5 suspension, or who has failed to renew his or her license while it was under suspension, or who
6 has been a manager, administrator, owner member, officer, director, associate, or partner of any
7 partnership, corporation, firm, or association whose application for a license has been denied or
8 revoked, is under suspension or has been placed on probation, and while acting as the manager,
9 administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly
10 participated in any conduct for which the license was denied, revoked, suspended, or placed on
11 probation, shall be prohibited from serving as a manger, administrator, owner, member, officer,
12 director, associate, or partner of a licensee as follows:

13 (1) Where a probationary license is issued or where an existing license is placed on
14 probation, this prohibition shall remain in effect for a period not to exceed five years.

15 (2) Where the license is denied or revoked, the prohibition shall continue until the license is
16 issued or reinstated."

17 10. Health and Safety Code section 11153 states, in pertinent part:

18 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
19 purpose by an individual practitioner acting in the usual course of his or her professional practice.
20 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
21 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
22 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
23 an order purporting to be a prescription which is issued not in the usual course of professional
24 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
25 controlled substances, which is issued not in the course of professional treatment or as part of an
26 authorized narcotic treatment program, for the purpose of providing the user with controlled
27 substances, sufficient to keep him or her comfortable by maintaining customary use."
28

1 11. California Code of Regulations, title 16, section 1715.6 states, "[t]he owner shall
2 report to the Board within thirty (30) days of discovery of any loss of the controlled substances,
3 including their amounts and strengths."

4 12. California Code of Regulations, title 16, section 1718 states:

5 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
6 Code shall be considered to include complete accountability for all dangerous drugs handled by
7 every licensee enumerated in Sections 4081 and 4332.

8 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
9 available for inspection upon request for at least 3 years after the date of the inventory."

10 13. California Code of Regulations, title 16, section 1761 states:

11 "(a) No pharmacist shall compound or dispense any prescription which contains any
12 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
13 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
14 validate the prescription.

15 "(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
16 a controlled substance prescription where the pharmacist knows or has objective reason to know
17 that said prescription was not issued for a legitimate medical purpose."

18 14. Code of Federal Regulations, title 21, section 1304.04, subdivision (h), states in
19 pertinent part:

20 "(h) Each registered pharmacy shall maintain the inventories and records of controlled
21 substances as follows:

22 "(1) Inventories and records of all controlled substances listed in Schedule I and II
23 shall be maintained separately from all other records of the pharmacy.

24 "(2) Paper prescriptions for Schedule II controlled substances shall be maintained at
25 the registered location in a separate prescription file.

26 "(3) Inventories and records of Schedules III, IV, and V controlled substances shall be
27 maintained either separately from all other records of the pharmacy or in such form that the
28 information required is readily retrievable from ordinary business records of the pharmacy."

1 4mg were from out-of-the-area patients and were mainly from the same 7 doctors (Drs. Arnold,
2 Charlap, Onubah, Garfinkel, Lifson, Salari, and Shamlou), who were themselves out-of-the-area.
3 When questioned, Respondent Abergel stated that some of the prescriptions were delivered by
4 "drivers," and he did not have identification from the "drivers."

5 22. A Board Inspector inquired whether Respondent Pharmacy had experienced any thefts
6 or losses. Respondent Abergel provided the Board Inspector with a "Report of Theft or Loss of
7 Controlled Substances" (DEA Form 106). Respondent Abergel acknowledged that he had not
8 reported the loss to the Board.

9 23. A Board Inspector also gathered documents from Respondent Pharmacy for the time
10 period July 8, 2010 to December 18, 2012, including invoices from wholesalers for the brand and
11 generic forms of Dilaudid 4 mg, Oxycontin 30 mg, and Percocet 10/32, drug utilization reports for
12 those same drugs, and controlled substance daily logs.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Filing Erroneous Prescriptions and Failure to Assume** 15 **Co-Responsibility in Legitimacy of Prescriptions)**

16 24. Respondent Pharmacy and Respondent Abergel (collectively "Respondents") are
17 subject to disciplinary action under Code section 4301, subdivision (j), in conjunction with Health
18 and Safety Code section 11153, subdivision (a), and Code section 4301, subdivision (o), in
19 conjunction with California Code of Regulations, title 16, section 1761, on the grounds of
20 unprofessional conduct in that in between 2011 and 2012, Respondents failed to assume their
21 corresponding responsibility by dispensing controlled substances to habitual doctor and pharmacy
22 shoppers, by failing to validate the legitimacy of prescriptions, by failing to review patients' drug
23 history, and by dispensing erroneous and/or uncertain prescriptions. The circumstances are as
24 follows:

25 25. Patient R.A. #1: Between May 2012 and October 2012, Respondents dispensed 6
26 prescriptions for oxycodone 30 mg to R.A. #1 from West Hollywood. The Patient Activity
27 Report ("PAR") showed that R.A. #1 had obtained prescriptions for oxycodone 30 mg from 8
28 different doctors (ranging from Northridge, Panorama City, and Corona) and 7 different

1 pharmacies (ranging from Victorville, Visalia, and Santa Ana) between June 2011 and October
2 2012.

3 26. Patient R.A. #2: Between March 2012 and July 2012, Respondents dispensed
4 prescriptions for oxycodone 30 mg to Patient R.A. # 2 written by 4 different doctors from
5 Woodland Hills, Panorama City, and Corona.

6 27. Patient A.C.: The PAR showed that A.C. had obtained prescriptions for oxycodone 30
7 mg from 3 doctors (ranging from Northridge to Inglewood) and 3 pharmacies (ranging from
8 Victorville, Westminster, and Valencia) between May 2011 and April 2012.

9 28. Patient D.G.: The PAR showed that D.G., from Long Beach, obtained prescriptions
10 for oxycodone 30 mg and hydrocodone/apap 5/500 and 7.5/750 from 9 doctors and 7 pharmacies
11 (ranging from Huntington Park, Ontario, and Rancho Palos Verdes) between July 2009 and
12 September 2012.

13 29. Patient S.H.: The PAR showed that S.H., from Los Angeles, obtained prescriptions
14 for oxycodone 30 mg from 8 doctors (ranging from Inglewood, Northridge, and Panorama City)
15 and 7 pharmacies (ranging from Alhambra, Westminster, Huntington Beach, and Ridgecrest)
16 between February 2011 and August 2012.

17 30. Patient H.L.: On December 1, 2011, Respondents dispensed RX #60232 from Dr.
18 Cho for 120 tablets of oxycodone 30 mg. On December 20, 2011, Respondent dispensed RX
19 #60925 from Dr. Arnold for 180 tablets of oxycodone 30 mg, which was 11 days early. The PAR
20 showed that H.L., from Lancaster, obtained prescriptions for oxycodone 30 mg and
21 hydrocodone/apap 10/325 and 5/500 from 9 doctors (ranging from Inglewood, Beverly Hills, San
22 Diego, and Corona) and 10 pharmacies (ranging from Inglewood and Ridgecrest) between
23 December 2010 and August 2012.

24 31. Patient A.J.: Between March 2012 and June 2012, Respondents dispensed 4
25 prescriptions of oxycodone 30 mg to A.J. from 3 different doctors. During this time period, A.J.
26 obtained prescriptions for oxycodone 30 mg from 3 other pharmacies ranging from Long Beach to
27 Gardena.

28

1 32. Patient B.M.: The PAR showed that B.M. had RX #541123 from Dr. Arnold for 180
2 tablets of oxycodone 30 mg (30 days supply) filled on January 6, 2012 at another pharmacy. On
3 January 28, 2012, Respondents filled RX #62258 from Dr. Shamlou for 180 tablets of oxycodone
4 30 mg (30 days supply), which was 8 days early. B.M. had RX #54442 from Dr. Arnold for 180
5 tablets of oxycodone 30 mg (30 days supply) filled on March 2, 2012 at another pharmacy. On
6 March 12, 2012, Respondents filled RX #64202 from Dr. Sison for 150 tablets of oxycodone 30
7 mg (30 days supply), which was 20 days early.

8 33. Patient N.E.: The PAR showed that N.E., from Castaic, obtained prescriptions for
9 oxycodone 30 mg from 6 doctors (ranging from Northridge to Modesto) and 4 pharmacies (all in
10 Valencia) between September 2009 and December 2012.

11 34. Patient J.O.: The PAR showed that J.O. had RX #348972 from Dr. Gatus for 90
12 tablets of oxycodone 30 mg (30 days supply) filled on January 7, 2011 at another pharmacy. On
13 January 10, 2011, Respondents filled RX #46863 from Dr. Borazjani for 100 tablets of oxycodone
14 30 mg (20 days supply), which was 23 days early. J.O had RX #353146 from Dr. Gatus for 90
15 tablets of oxycodone 30 mg (30 days supply) filled on February 11, 2011 at another pharmacy.
16 On February 21, 2011, Respondents filled RX #48699 from Dr. Borazjani for 100 tablets of
17 oxycodone mg (15 day supply), which was 20 days early. On March 7, 2011, Respondents filled
18 RX #49276 from Dr. Borazjani for 100 tablets of oxycodone 30 mg (20 days supply). On March
19 11, 2011, J.O. had RX #356523 from Dr. Gatus for 90 tablets of oxycodone 30 mg (30 day
20 supply) filled at another pharmacy. J.O. now had a 50 day supply of oxycodone 30 mg in his
21 possession. On March 21, 2011, Respondents filled RX #49789 from Dr. Borazjani for 100
22 tablets of oxycodone 30 mg (20 days supply), which was 40 days early. On April 4, 2011,
23 Respondents filled RX #50328 from Dr. Borazjani for 100 tablets of oxycodone 30 mg (25 days
24 supply), which was 7 days early. On January 31, 2012, J.O. had RX #274305 from Dr. Emenike
25 for 150 tablets of oxycodone 30 mg (25 days supply) filled at another pharmacy. On February 13,
26 2012, Respondents filled RX #62922 from Dr. Gatus for 60 tablets of oxycodone 30 mg (30 days
27 supply), which was 12 days early.

28

1 The PAR also showed that J.O., from North Hollywood, went to 14 different pharmacies
2 (ranging from Simi Valley, Burbank, and Panorama City) and 9 different doctors (ranging from
3 Lancaster to Seal Beach) between November 2009 and February 2012.

4 35. Respondents filled prescriptions for controlled substances from the same several
5 doctors for patients from all areas of Southern California, which were delivered at the same time
6 by unidentified drivers without any patient consultation, as follows:

7 (a) On April 29, 2011, there were 12 sequential prescriptions from the offices of
8 Drs. Onubah, Garfinkel, and Lifson for oxycodone 30 mg, Percocet/Endocet 10/325, and Dilaudid
9 4 mg. Drs. Onubah, Garfinkel, and Lifson shared an office located at 7035 Reseda Blvd, Suite B
10 in Reseda, CA.¹ The patients were from locations ranging from Los Angeles, Canoga Park, and
11 Panorama City.

12 (b) On May 6, 2011, there were 14 prescriptions from the offices of Drs. Onubah,
13 Garfinkel, and Lifson for oxycodone 30 mg, Percocet/Endocet 10/325, and Dilaudid 4 mg. The
14 patients were from locations ranging from Los Angeles, Beverly Hills, and North Hollywood.

15 (c) On June 6, 2011, there were 20 prescriptions from the offices of Drs. Onubah,
16 Garfinkel, and Lifson for oxycodone 30 mg and Percocet/Endocet 10/325. The patients were
17 from locations ranging from Los Angeles, Rialto, Hacienda Heights, Gardena, California City,
18 Venice and Moreno Valley.

19 (d) On July 21, 2011, there were 17 prescriptions from the offices of Drs. Onubah,
20 Garfinkel, Lifson, and Salari (who also had an office located at 7035 Reseda Blvd, Suite B in
21 Reseda, CA) for oxycodone 30 mg, Percocet/Endocet 10/325, Norco 10/325, Lortab 10/500, and
22 Dilaudid 4 mg. The patients were from locations ranging from Los Angeles, North Hollywood,
23 Sylmar, South Pasadena, Mission Viejo, Palm Springs, and Norwalk.

24 (e) On August 16, 2011, there were 16 prescriptions from the offices of Drs.
25 Onubah, Garfinkel, Lifson, and Salari for oxycodone 30 mg, Percocet/Endocet 10/325, and
26 Dilaudid 4 mg. The patients were from locations ranging from Los Angeles Inglewood, Santa
27

28 ¹ Drs. Garfinkel and Lifson also maintained separate offices.

1 Monica, Pomona, Compton, Manhattan Beach, Paramount, and Glendale. Respondent Abergel
2 subsequently admitted to a Board Inspector that he was an "idiot" for filling prescriptions from
3 Drs. Onubah, Garfinkel, Lifson, and Salari.

4 (f) On January 30, 2012, there were 6 prescriptions from Dr. Arnold in Inglewood
5 for oxycodone 30 mg. The patients were from locations ranging from Compton, Long Beach, and
6 Los Angeles. Also on January 20, 2012, there were 6 prescriptions from Dr. Shamlou in Los
7 Angeles for 30 oxycodone 30 mg. The patients were from locations ranging from Northridge,
8 Mission Hills, and Sylmar. Both doctors gave the same dosage of oxycodone 30 mg for each of
9 their patients.

10 (g) On February 2, 2012, there were 11 prescriptions from Dr. Arnold for
11 oxycodone 30 mg. All of the patients had the same dosage.

12 (h) On February 9, 2012, there were 10 prescriptions from Dr. Charlap for
13 oxycodone 30 mg. The patients were from locations ranging from Los Angeles, Inglewood, Santa
14 Monica, and Sylmar.

15 SECOND CAUSE FOR DISCIPLINE

16 (Failure to Keep Complete Accountability)

17 36. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
18 under Code section 4301, subdivision (o), in conjunction with Code section 4081, subdivision (a),
19 California Code of Regulations, title 16, section 1718, and Code of Federal Regulations, title 21,
20 section 1304 et seq., on the grounds of unprofessional conduct in that Respondents failed to keep
21 a proper inventory of controlled substances and failed to account for all controlled substances in
22 Respondent Pharmacy. A Board Inspector audited Respondent Pharmacy's records from July 8,
23 2010 to December 18, 2012 regarding hydromorphone 4 mg, oxycodone 30 mg, and
24 oxycodone/acetaminophen 10/325 (generic and brand for all three drugs). The Board inspector
25 discovered that Respondent Pharmacy had an overage of 74 tablets of hydromorphone 4 mg, an
26 overage of 164 tablets of oxycodone 30 mg, and a shortage of 584 tablets of
27 oxycodone/acetaminophen 10/325.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Notify the Board of Loss of Controlled Substances)**

3 37. Respondent Pharmacy and Respondent Abergel are subject to disciplinary action
4 under Code section 4301, subdivision (o), in conjunction with California Code of Regulations,
5 title 16, section 1715.6, on the grounds of unprofessional conduct in that Respondents failed to
6 report the loss of 400 hydrocodone/apap tablets 5/500 strength, 200 hydrocodone/apap tablets
7 7.5/750 strength, 480 hydrocodone/apap tablets 10/650 strength, and 440 hydrocodone/apap
8 tablets 10/325 strength. The loss occurred on or about September 3, 2012. Respondents reported
9 the loss to the DEA but failed to report the loss to the Board within 30 days of its occurrence.

10 **OTHER MATTERS**

11 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
12 PHY 50146 issued to The Druggist Inc., The Druggist Inc. shall be prohibited from serving as a
13 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for
14 five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy
15 Permit Number PHY 50146 is reinstated if it is revoked.

16 35. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
17 PHY 50146 issued to The Druggist Inc. while Joel Abergel has been an officer and owner and had
18 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
19 Joel Abergel shall be prohibited from serving as a manager, administrator, owner, member,
20 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY
21 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if it is
22 revoked.

23 **DISCIPLINE CONSIDERATIONS**

24 39. To determine the degree of discipline, if any, to be imposed on Respondent Abergel,
25 Complainant alleges that on or about October 31, 2007, the Board of Pharmacy issued a Citation
26 to Respondent Abergel in Case No. CI 2007 34523 in the amount of \$4,000.00 for violating
27 California Code of Regulations, title 16, section 1714, subdivision (d) [theft policy]. That
28 Citation is now final and is incorporated by reference as if fully set forth.

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 Pharmacy Permit Number PHY 50146 issued to The Druggist, Inc.;

2. Revoking or suspending Pharmacist License Number RPH 41192 issued to Joel Abergel aka Joelle Abergel;

3. Prohibiting The Druggist Inc. from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

4. Prohibiting Joel Abergel from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50146 is placed on probation or until Pharmacy Permit Number PHY 50146 is reinstated if Pharmacy Permit Number 50146 issued to The Druggist Inc. is revoked;

5. Ordering The Druggist, Inc. and Joel Abergel aka Joelle Abergel 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

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

DATED:

5/3/16

Virginia Herold

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

LA2014512855
51876443_2.doc