

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5337

12 **LDWPC INC., DBA GARFIELD**
13 **PRESCRIPTION PHARMACY**
9400 Brighton Way
14 Beverly Hills, CA 90210

A C C U S A T I O N

15 Pharmacy Permit No. PHY 46072

16 **PETER FRANZ DOLEZAL**
6722 Capps Avenue
17 Reseda, CA 91335

18 Pharmacist Permit No. RPH 33437

19 Respondents.
20

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about February 20, 2003, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 46072 to LDWPC Inc., doing business as Garfield Prescription Pharmacy
28 (Respondent Garfield Prescription Pharmacy). The Pharmacy Permit was in full force and effect

1 at all times relevant to the charges brought herein and will expire on February 1, 2016, unless
2 renewed.

3 3. On or about October 9, 1979, the Board of Pharmacy issued Pharmacist License
4 Number RPH 33437 to Peter Franz Dolezal (Respondent Peter Dolezal). The Pharmacist License
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 January 31, 2016, unless renewed.

7 JURISDICTION

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

11 5. Section 4011 of the Code provides that the Board shall administer and enforce both
12 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
13 Act [Health & Safety Code, § 11000 et seq.].

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY AND REGULATORY PROVISIONS

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

23 The board shall take action against any holder of a license who is guilty of
24 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:

25 ...

26 (d) The clearly excessive furnishing of controlled substances in violation of
27 subdivision (a) of Section 11153 of the Health and Safety Code.

28 ...

1 (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....

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

6 ...
7 9. Section 4113(c) of the Code states:

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

10 10. Section 4306.5 of the Code states, in pertinent part:

11 Unprofessional conduct for a pharmacist may include any of the following:

12 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
his or her education, training, or experience as a pharmacist, whether or not the act
13 or omission arises in the course of the practice of pharmacy or the ownership,
management, administration, or operation of a pharmacy or other entity licensed by
14 the board.

15 Acts or omissions that involve, in whole or in part, the failure to consult
appropriate patient, prescription, and other records pertaining to the performance of
16 any pharmacy function.

17 ...
18 11. Health and Safety Code section 11153(a) states:

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

28 ...
12. Section 1707.3 of title 16, California Code of Regulations states:

Prior to consultation as set forth in section 1707.2, a pharmacist shall review a
patient's drug therapy and medication record before each prescription drug is
delivered. The review shall include screening for severe potential drug therapy

1 problems.

2 13. Section 1716 of title 16, California Code of Regulations states:

3 Pharmacists shall not deviate from the requirements of a prescription except
4 upon the prior consent of the prescriber or to select the drug product in accordance
5 with Section 4073 of the Business and Professions Code.

6 Nothing in this regulation is intended to prohibit a pharmacist from exercising
7 commonly accepted pharmaceutical practice in the compounding or dispensing of a
8 prescription.

9 14. Section 1761 of title 16, California Code of Regulations states:

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

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

18 COST RECOVERY

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

23 DRUGS

24 16. Hycodan is the brand name for hydrocodone, bitartrate and homatropin, a Schedule III
25 controlled substance pursuant to Health and Safety Code section 11056 and a dangerous drug
26 pursuant to Business and Professions Code section 4022.

27 17. Lortab is the brand name for hydrocodone/APAP, a Schedule III controlled substance
28 pursuant to Health and Safety Code section 11056 and a dangerous drug pursuant to Business and
Professions Code section 4022.

18 18. Norco is the brand name for hydrocodone/acetaminophen, a Schedule III controlled
19 substance pursuant to Health and Safety Code section 11056(e)(5) and a dangerous drug pursuant
20 to Business and Professions Code section 4022.

1 19. Phenergan with Codeine is the brand name for promethazine with codeine, a Schedule
2 V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and is a
3 dangerous drug pursuant to Business and Professions Code section 4022.

4 20. Soma is the brand name for carisoprodol, a Schedule IV controlled substance pursuant
5 to 21 California Federal Regulations section 1308.14 and is a dangerous drug pursuant to
6 Business and Professions Code section 4022.

7 21. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
8 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 **FACTUAL ALLEGATIONS**

11 22. From February 20, 2003 through the present, Respondent Peter Dolezal was the
12 Pharmacist-in-Charge of Respondent Garfield Prescription Pharmacy and the only pharmacist on
13 duty at Respondent Garfield Prescription Pharmacy.

14 23. From November 1, 2009 through December 12, 2012, Respondents dispensed
15 prescriptions for controlled substances written in an identical fashion, for multiple patients at the
16 same time on the same day, sequentially, with individuals other than the patients picking up those
17 prescriptions. Respondents filled many early refills for controlled substances, including
18 Prescription number 280843 dispensed four days after Prescription number 280786 on October
19 11, 2012 and Prescription number 263568 dispensed three times on December 6, 2010.
20 Prescriptions for controlled substances were also filled multiple times on the same day for the
21 same patient. Prescriptions for alprazolam and promethazine with codeine dispensed by
22 Respondents exceeded the daily maximums recommended to be prescribed for those drugs.

23 24. Additionally, Respondents dispensed prescriptions which duplicated drug therapies.
24 Respondents also dispensed prescriptions for promethazine with codeine without dispensing a
25 corresponding prescription for an antibiotic. Patients paid for the controlled substance
26 prescriptions in cash at Respondent Garfield Prescription Pharmacy and did not seek
27 reimbursement from an insurance company or government agency. Respondents did not review
28 CURES reports before dispensing controlled substances or otherwise have access to that database.

1 25. Respondents filled prescriptions for controlled substances for patients who lived a
2 considerable distance from Respondent Garfield Prescription Pharmacy and/or the provider. For
3 example, on October 12 and October 15, 2012, Respondents filled at least eighteen prescriptions
4 for promethazine with codeine from Dr. P.V. and Physician Assistant M.C. who were an average
5 of 15 miles away from those prescribers' offices. Two of those patients lived over forty five
6 miles away from Respondent Garfield Prescription Pharmacy.

7 26. Respondents dispensed forged prescriptions. On September 9, 2011, Respondents
8 dispensed prescriptions for controlled substances allegedly prescribed by Dr. K.S. but were in
9 fact, not prescribed by him. These prescriptions were also not written on secured paper. No
10 patient addresses were listed on the forged prescriptions.

11 27. From 2010 through 2012, Respondents' highest volume of dispensed drug was a
12 frequently abused drug, promethazine with codeine.

13 28. Respondents Garfield Prescription Pharmacy and Peter Dolezal placed orders for
14 suspiciously large amounts of controlled substances with their drug wholesalers.

15 29. Respondents Garfield Prescription Pharmacy and Peter Dolezal did not follow proper
16 procedures for verifying if a prescription for a controlled substance was written for a legitimate
17 medical purpose in that they dispensed prescriptions to patients who had lost their wallets or
18 social security cards and had been victims of identity theft. If Respondents had attempted to
19 contact the alleged patients, they would have determined that the prescriptions were not dispensed
20 to the victims of identity fraud.

21 30. Many of the prescriptions dispensed by Respondents were written by Dr. N.A. On
22 October 5, 2011, Dr. N.A. was convicted upon his plea of guilty to the crimes of conspiracy to
23 distribute oxycodone, hydromorphone, hydrocodone, alprazolam and promethazine with codeine
24 in violation of sections 21 United States Code sections 841 (a)(1), (b)(1)(E), (b)(1)(C), (b)(2),
25 (b)(1)(C) and 846 and 18 United States Code section 2(b) in *United States v. N.A.*, Case Number
26 CR 10-01260-SJO, United States District Court for the Central District of California. He was
27 also disciplined by the Medical Board of California for that conviction.

28 31. Other prescriptions dispensed by Respondents were written by Dr. A.S. In April 2007,

1 Dr. A.S. was disciplined by the Medical Board of California for gross negligence, repeated
2 negligent acts, incompetence, dishonesty, and prescribing without medical indication or
3 performing a good faith physical examination, among other violations of the Medical Practice
4 Act. In March 2010, he was disciplined again for dishonesty and failing to comply with the term
5 and condition of his probation requiring him to maintain a drug log for all controlled substances
6 ordered, prescribed, dispensed, administered or possessed by Dr. A.S. On or about August 14,
7 2014, Dr. A.S. was found guilty of fourteen counts of violating title 21 United States Code section
8 841(a)(1), (b)(1)(E), (b)(2) and (b)(3), distribution of hydrocodone, alprazolam, carisoprodol,
9 diazepam and promethazine with codeine and three counts of violating title 18 United States Code
10 section 1956(A)(1), (B) (i), money laundering, in *United States v. A.S.*, Case Number CR-14-157-
11 R, United States District Court for the Central District of California.

12 32. Other prescriptions dispensed by Respondents were written by Dr. E.S. On or about
13 February 6, 2014, in *The People of the State of California v. E.S.*, Los Angeles County Superior
14 Court Case No. SA081626, Dr. E.S. was convicted of violating Health & Safety Code section
15 11153(a), issuing a prescription for a controlled substance for a non-legitimate medical purpose.
16 On or about May 31, 2013, Dr. E.S. was disciplined by the Medical Board of California for that
17 conviction and other violations of the Medical Practice Act.

18 33. Other prescriptions dispensed by Respondents were written by Dr. B.G. Effective
19 October 21, 2010, Dr. B.G. was disciplined by the Medical Board of California for illegally using
20 controlled substances, cocaine and methamphetamine. Effective August 29, 2012, Dr. B.G. was
21 also disciplined by the Medical Board of California for violations of the Medical Practice Act,
22 including excessive prescribing, dishonesty, false representations and failure to maintain adequate
23 and accurate records for participating in a scheme to sell prescriptions to drug users without
24 medical justification.

25 34. On November 1, 2012, a Board inspector discussed the obligations of pharmacists
26 when dispensing controlled substances with Respondent Peter Dolezal. Despite the discussion of
27 pharmacists' obligations when dispensing controlled substances, Respondents continued to
28 dispense multiple controlled substances without verifying if all prescriptions were written for a

1 legitimate medical purposes. For example, prescriptions for hydrocodone 10mg/APAP 325 mg,
2 alprazolam 2mg and promethazine with codeine were dispensed to the same patient, CJW on
3 November 16, 2012 and those same prescriptions were dispensed to JI on November 29, 2012.
4 Other examples include the dispensing of full bottles of promethazine with codeine were
5 dispensed in November 2012, including 8 patients on November 26, 2012 and 8 patients on
6 November 27, 2012.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Failing to Comply with Corresponding Responsibility**

9 **for Legitimate Controlled Substance Prescriptions against Respondents)**

10 35. Respondents are subject to disciplinary action under Code section 4301(j), for
11 violating Health and Safety Code section 11153(a), in that they failed to comply with their
12 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
13 medical purpose when Respondents furnished prescriptions for controlled substances even though
14 "red flags" were present, indicating those prescriptions were not issued for a legitimate medical
15 purpose, as set forth in paragraphs 22 through 34 above, which are incorporated herein by
16 reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Clearly Excessive Furnishing of Controlled Substances against Respondents)**

19 36. Respondents are subject to disciplinary action under Code section 4301(d), for the
20 clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section
21 11153 of the Health and Safety Code, as set forth in paragraphs 22 through 34 above, which are
22 incorporated herein by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**

25 **Irregularities, Uncertainties, Ambiguities or Alterations against Respondents)**

26 37. Respondents are subject to disciplinary action under Code section 4301(o), for
27 violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed
28 prescriptions for controlled substances, which contained significant errors, omissions,

1 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 34
2 above, which are incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Review Patients' Medication Record Before Prescription Drugs Delivered**
5 **against Respondents)**

6 38. Respondents are subject to disciplinary action under Code section 4301(o), for
7 violating title 16, California Code of Regulations, section 1707.3, in that they dispensed
8 prescriptions for drugs, without review of patients' medication records before each prescription
9 drug was delivered. Such a review would have revealed numerous "red flags," as set forth in
10 paragraphs 22 through 34 above, which are incorporated herein by reference.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding**
13 **Responsibility when Dispensing Controlled Substances**
14 **against Respondent Peter Dolezal)**

15 39. Respondent Peter Dolezal is subject to disciplinary action under Code section
16 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that they failed
17 to exercise or implement his best professional judgment or corresponding responsibility when
18 dispensing controlled substances, as set forth in paragraphs 22 through 34 above, which are
19 incorporated herein by reference.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct against Respondents)**

22 40. Respondents are subject to disciplinary action under Code section 4301 for
23 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
24 34 above, which are incorporated herein by reference.

25 **DISCIPLINARY CONSIDERATIONS**

26 41. To determine the degree of discipline, if any, to be imposed on Respondents,
27 Complainant alleges:
28

1 a. On March 12, 2012, the Board issued Citation number CI 2011 49865 against
2 Respondent Garfield Prescription Pharmacy for violating Business and Professions Code section
3 4126.5(a)(4) for improperly furnishing drugs to a wholesaler and 4059.5(a) for selling dangerous
4 drugs to an entity but indicating on the shipping label that it was sold by another entity. The
5 Board issued a fine which Respondent paid.

6 b. On March 12, 2012, the Board issued Citation number CI 2011 51652 against
7 Respondent Peter Dolezal for violating Business and Professions Code section 4126.5(a)(4) for
8 improperly furnishing drugs to a wholesaler and 4059.5(a) for selling dangerous drugs to an entity
9 but indicating on the shipping label that it was sold by another entity. The Board issued a Citation
10 and Fine and Order of Abatement, which was complied with by Respondent's submission of
11 proof of enrollment in a pre-approved ethics course.

12 c. Effective April 27, 2001, the Board adopted the Stipulated Settlement and
13 Disciplinary Order against Respondent Peter Dolezal and Respondent Garfield Prescription
14 Pharmacy's predecessor in Case No. 2128, OAH No. L-200050072. Respondent Peter Dolezal
15 was placed on probation for three years and the original pharmacy permit issued to Respondent
16 Garfield Prescription Pharmacy's predecessor was voluntarily surrendered for, violating drug laws
17 and regulations, including Health & Safety Code section 11153(a).

18 PRAYER

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 46072, issued to LDWPC
22 Inc. doing business as Garfield Prescription Pharmacy;

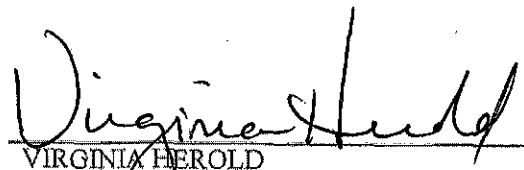
23 2. Revoking or suspending Pharmacist License Number RPH 33437, issued to Peter
24 Franz Dolezal;

25 3. Ordering LDWPC Inc. doing business as Garfield Prescription Pharmacy and Peter
26 Franz Dolezal to pay the Board of Pharmacy the reasonable costs of the investigation and
27 enforcement of this case, pursuant to Business and Professions Code section 125.3;
28

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

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

DATED: 3/31/15



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

SD2014708186
71001759.doc