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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. 5549

12 **DRUG PHARM, INC.,**
13 **dba EL PORTAL PHARMACY**
14 **BA VAN HUYNH,**
15 **aka BA HUYNH, PRESIDENT/CEO,**
16 **SECRETARY, TREASURER/CFO,**
17 **PHARMACIST-IN-CHARGE**
18 **3377 G Street, Suite B**
19 **Merced, CA 95340**

ACCUSATION

20 **Pharmacy Permit No. PHY 50895**

21 **and**

22 **BA VAN HUYNH**
23 **2527 Deanville Circle**
24 **Clovis, CA 93611**

25 **Pharmacist License No. RPH 55924**

26 Respondents.

27 Complainant alleges:

28 **PARTIES**

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

2. Or about July 13, 2012, the Board issued Pharmacy Permit Number PHY 50895 to Drug Pharm, Inc. ("Respondent Drug Pharm"), doing business as El Portal Pharmacy, with Ba

1 Van Huynh, also known as Ba Huynh ("Respondent Huynh"), as pharmacist-in-charge and
2 treasurer/chief financial officer. On or about September 27, 2013, Respondent Huynh also
3 became the president/chief executive officer and secretary. The pharmacy permit was in full
4 force and effect at all times relevant to the charges brought herein and will expire on July 1, 2017,
5 unless renewed.

6 3. On or about August 4, 2004, the Board issued Pharmacist License Number RPH
7 55924 to Respondent Huynh. The pharmacist license was in full force and effect at all times
8 relevant to the charges brought herein and will expire on February 29, 2018, unless renewed.

9 **JURISDICTION/STATUTORY PROVISIONS**

10 4. This Accusation is brought before the Board under the authority of the following
11 laws. All section references are to the Business and Professions Code unless otherwise indicated.

12 5. Section 4300 states, in pertinent part:

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

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

16 (1) Suspending judgment.

17 (2) Placing him or her upon probation.

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

20 (4) Revoking his or her license.

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

22 6. Section 4300.1 states:

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

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7. Section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

....

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

....

(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 . . .

8. Section 4306.5 states, in pertinent part:

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

....

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services . . .

9. Section 4113, subdivision (c), of the Code states:

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

10. Section 4307(a) of the Code states that:

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

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

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

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2 11. Title 21, Code of Federal Regulations, Section 1306.04, subsection (a),
states:

3 A prescription for a controlled substance to be effective must be issued
4 for a legitimate medical purpose by an individual practitioner acting in the usual
5 course of his professional practice. The responsibility for the proper prescribing and
6 dispensing of controlled substances is upon the prescribing practitioner, but a
7 corresponding responsibility rests with the pharmacist who fills the prescription. An
8 order purporting to be a prescription issued not in the usual course of professional
9 treatment or in legitimate and authorized research is not a prescription within the
10 meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person
11 knowingly filling such a purported prescription, as well as the person issuing it, shall
12 be subject to the penalties provided for violations of the provisions of law relating to
13 controlled substances.

14 12. Health and Safety Code section 11153, subdivision (a), states:

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

27 13. Health and Safety Code section 11165, subdivision (d), states:

28 For each prescription for a Schedule II, Schedule III, or Schedule IV
controlled substance, as defined in the controlled substances schedules in federal law
and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other
dispenser shall report the following information to the Department of Justice as soon
as reasonably possible, but not more than seven days after the date a controlled
substance is dispensed, in a format specified by the Department of Justice. . .

COST RECOVERY

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

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1 **DRUG CLASSIFICATIONS**

2 15. "Norco" is the brand name for a compound consisting of 10 mg hydrocodone
3 bitartrate and 325 mg acetaminophen per tablet, and is used to treat pain. At all times relevant to
4 the charges brought herein, Norco was classified as a Schedule III controlled substance pursuant
5 to Health and Safety Code section 11056, subdivision (e)(4).¹ Norco is also a dangerous drug
6 pursuant to Business and Professions Code section 4022.

7 16. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance as
8 designated by Title 21, Code of Federal Regulations, section 1308.14, subdivision (c)(6), and is a
9 dangerous drug pursuant to Business and Professions Code section 4022. Soma is used to treat
10 muscle spasms.

11 17. "Oxycodone" is a Schedule II controlled substance as designated by Health and
12 Safety Code section 11055, subdivision (b)(1)(M), and is a dangerous drug pursuant to Business
13 and Professions Code section 4022. Oxycodone is used to treat pain.

14 **FACTUAL ALLEGATIONS**

15 18. In or about June 2013, the Board received notification from Amerisource Bergen
16 Company that they stopped sales of hydrocodone and/or oxycodone products to El Portal
17 Pharmacy ("EPP"). The Board opened an investigation of EPP and obtained a CURES² report
18 identifying Dr. Jose Luis Flores as a top prescriber of controlled substances dispensed at EPP (Dr.
19 Flores surrendered his physician's and surgeon's certificate to the Medical Board of California
20 effective April 16, 2014).

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22 _____
23 ¹ Hydrocodone has been rescheduled from a Schedule III to Schedule II controlled
substance via the Controlled Substances Act (21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c)).

24 ² The Controlled Substance Utilization Review and Evaluation System, CURES, is a
25 database containing over 100 million entries of controlled substance drugs that were dispensed in
26 California. CURES is part of a program developed by the California Department of Justice,
27 Bureau of Narcotic Enforcement, which allows access to the Prescription Drug Monitoring
28 (PDMP) system. The PDMP system allows pre-registered users, including licensed healthcare
prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense
controlled substances, law enforcement, and regulatory boards, to access patient controlled
substance history information.

1 19. On or about November 7, 2013, a Board inspector conducted an inspection of EPP
2 and was assisted by Respondent Huynh (“Huynh”). The inspector asked Huynh to provide her
3 with patient profiles for 37 patients she had selected based on the CURES data and to complete a
4 questionnaire on each patient. The inspector also requested and obtained dispensing reports for
5 carisoprodol 350 mg, hydrocodone/APAP 10/325 mg, and oxycodone 30 mg for the time period
6 from July 13, 2012 to November 7, 2013, a dispensing report for Dr. Flores, and several hard
7 copy prescriptions.

8 20. On or about November 14, 2013, the inspector received completed patient
9 questionnaires and patient profiles from Huynh.

10 21. In and between October 2014 and March 2015, the inspector requested and obtained
11 additional documentation, including various hardcopy prescriptions from Huynh, an updated
12 CURES report for EPP for the time period from July 1, 2012 to November 7, 2013, and a
13 dispensing report from EPP for all drugs dispensed between July 13, 2012 and December 4, 2012.

14 22. The inspector determined based on a review of the above documentation that:

15 a. From September 10, 2012 (EPP’s first day of business) to December 4, 2012, EPP
16 failed to transmit or report any CURES data to the Department of Justice (“DOJ”) even though
17 approximately 716 controlled substance prescriptions were dispensed by the pharmacy, including
18 prescriptions for carisoprodol 350 mg, oxycodone 30 mg, and hydrocodone/APAP 10/325 mg.
19 Further, approximately 303 (42%) of these controlled substances were prescribed by Dr. Flores.

20 b. EPP dispensed 36 prescriptions for carisoprodol 350 mg (a total of approximately
21 3,660 tablets), 81 prescriptions for oxycodone 30 mg (a total of approximately 11,200 tablets),
22 and 93 prescriptions for hydrocodone/APAP 10/325 mg (a total of approximately 14,200 tablets).

23 c. 59% of the patients did not live in Merced or the surrounding area;

24 d. 54% of the patients had multiple addresses;

25 e. 100% of the patients paid cash for their prescriptions;

26 f. 95% of the patients’ prescriptions were picked up by a “caregiver”;

27 g. 95% of the patients were never seen by the pharmacy staff; and

28 h. 32% of the patients were under the age of 30 and 59% were under the age of 40.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Failure to Exercise Best Professional Judgment)**

3 23. Respondents Drug Pharm (EPP) and Huynh are subject to disciplinary action
4 pursuant to sections 4301 and 4306.5, subsection (b) for unprofessional conduct, in that
5 Respondents failed to exercise or implement their best professional judgment with regard to the
6 dispensing or furnishing of controlled substances and dangerous drugs, as follows: On and
7 between October 6, 2012 and September 23, 2013, Respondents dispensed numerous
8 prescriptions for carisoprodol 350 mg, oxycodone 30 mg, and hydrocodone/APAP 10/325 mg
9 that were issued by Dr. Flores for 37 different patients despite Dr. Flores' repetitive prescribing
10 habits, the location of the patients' addresses in relation to EPP, the fact that all of the
11 prescriptions were paid for in cash and were dropped off and picked up by someone other than the
12 patients, the fact that the patients had multiple addresses, and the fact that almost 60% of the
13 patients were under the age of 40, as set forth in paragraphs 18 to 22, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Clearly Excessive Furnishing of Controlled Substances)**

16 24. Respondents Drug Pharm (EPP) and Huynh are subject to disciplinary action
17 pursuant to section 4301, subdivisions (d), for unprofessional conduct, in that on and between
18 October 6, 2012 and September 23, 2013, Respondents clearly excessively furnished controlled
19 substances, including carisoprodol 350 mg, oxycodone 30 mg, and hydrocodone/APAP 10/325
20 mg, as set forth in paragraphs 18 to 22, above, in violation of Health and Safety Code section
21 11153, subdivision (a).

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct –Corresponding Responsibility)**

24 25. Respondents Drug Pharm (EPP) and Huynh are subject to disciplinary action
25 pursuant to sections 4301 and 4306.5, subsection (b) for unprofessional conduct, in that
26 Respondents failed to exercise or implement their corresponding responsibility with regard to the
27 dispensing or furnishing of controlled substances and dangerous drugs for a legitimate medical
28 purpose, as follows: On and between October 6, 2012 and September 23, 2013, Respondents

1 dispensed numerous prescriptions for carisoprodol 350 mg, oxycodone 30 mg, and hydrocodone/
2 APAP 10/325 mg that were issued by Dr. Flores for 37 different patients despite Dr. Flores'
3 repetitive prescribing habits, the location of the patients' addresses in relation to EPP, the fact that
4 all of the prescriptions were paid for in cash and were dropped off and picked up by someone
5 other than the patients, the fact that the patients had multiple addresses, and the fact that almost
6 60% of the patients were under the age of 40, as set forth in paragraphs 18 to 22, above, in
7 violation of Health and Safety Code section 11153, subdivision (a) and Title 21, Code of Federal
8 Regulations, section 1306.04, subsection (a).

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of Controlled Substance Utilization Review and Evaluation System)**

11 26. Respondents Drug Pharm (EPP) and Huynh are subject to disciplinary action
12 pursuant to section 4301, subdivision (j), for unprofessional conduct, in that Respondents violated
13 state laws regulating controlled substances, as set forth in paragraphs 21 and 22 above, and as
14 follows: On and between September 10, 2012 and December 4, 2012, Respondents failed to
15 report to the DOJ the required information for Schedule II, III, and IV controlled substances,
16 including carisoprodol 350 mg, oxycodone 30 mg, and hydrocodone/APAP 10/325 mg dispensed
17 by EPP, as set forth in paragraphs 18 through 22, in violation of Health and Safety Code section
18 11165, subdivision (d).

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with State and Federal Laws)**

21 27. Respondent Huynh is subject to disciplinary action under section 4113, subsection (c)
22 for his failure to comply with all state and federal laws and regulations pertaining to the practice
23 of pharmacy based on the excessive furnishing of controlled substances, as alleged in paragraphs
24 18 through 22.

25 **MATTERS IN AGGRAVATION**

26 28. To determine the degree of discipline to be assessed against Respondent Huynh, if
27 any, Complainant alleges as follows: On or about September 16, 2010, the Board issued Citation
28

1 No. CI 2010 45658 against Respondent for violating California Code of Regulations, title 16,
2 section 1714, subdivision (d) (inadequate pharmacy security).

3 **OTHER MATTERS**

4 29. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
5 PHY 50895, issued to Drug Pharm, Inc., doing business as El Portal Pharmacy (EPP), then EPP
6 shall be prohibited from serving as a manger, administrator, owner, member, officer, director,
7 associate, or partner of a licensee for a period not to exceed five years if Pharmacy Permit
8 Number PHY 50895 is placed on probation or until Pharmacy Permit Number PHY 50895 is
9 reinstated, if the permit is revoked.

10 30. Pursuant to Code section 4307, if discipline is imposed on Pharmacy
11 Permit Number PHY 50895, issued to Drug Pharm, Inc., doing business as El Portal Pharmacy
12 (EPP), or if discipline is imposed on Pharmacist License No. RPH 55924, issued to Ba Van
13 Huynh, also known as Ba Huynh, for violations during the time that Ba Van Huynh acted as a
14 manger, administrator, owner, member, officer, director, associate, or partner and Ba Van Huynh
15 had knowledge or knowingly participated in any conduct for which the permit or license was
16 disciplined, then Ba Van Huynh shall be prohibited from serving as a manger, administrator,
17 owner, member, officer, director, associate, or partner on a license or permit issued by the Board
18 for a period not to exceed five years if discipline results in probation or until the license or permit
19 is reinstated, if the license or permit is revoked.

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 50895, issued to Drug
24 Pharm, Inc., doing business as El Portal Pharmacy;
- 25 2. Revoking or suspending Pharmacist License Number RPH 55924, issued to Ba Van
26 Huynh, also known as Ba Huynh;
- 27 3. Prohibiting Drug Pharm, Inc., doing business as El Portal Pharmacy, from serving as
28 a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for

1 five years if Pharmacy Permit Number PHY 50895 is placed on probation or until Pharmacy
2 Permit Number PHY 50895 is reinstated if the Pharmacy Permit is revoked;

3 4. Prohibiting Ba Van Huynh, also known as Ba Huynh, from serving as a manager,
4 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
5 either Pharmacy Permit Number PHY 50895 or Pharmacist License Number RPH 55924 is
6 placed on probation;

7 5. Prohibiting Ba Van Huynh, also known as Ba Huynh, from serving as a manager,
8 administrator, owner, member, officer, director, associate, or partner of a licensee if either
9 Pharmacy Permit Number PHY 50895 or Pharmacist License Number RPH 55924 is revoked,
10 until Pharmacy Permit Number PHY 50895 or Pharmacist License Number RPH 55924 is
11 reinstated;

12 6. Ordering Drug Pharm, Inc., doing business as El Portal Pharmacy, and Ba Van
13 Huynh, also known as Ba Huynh, to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and

16 7. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 3/1/17



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

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