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

10 In the Matter of the Accusation Against:

Case No. 5550

11 **WALGREENS #5372**
12 **16108 Foothill Blvd.**
13 **Fontana, CA 92335-3356**

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 44289**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 30, 1999, the Board of Pharmacy issued Original Permit Number
22 PHY 44289 to Walgreens #5372 (Respondent) and the address of record is 16108 Foothill
23 Boulevard, Fontana, CA 92335. The Pharmacy Permit expired on December 31, 2014 and the
24 registration was cancelled on February 13, 2015. Respondent was issued License Number PHY
25 52711 on December 31, 2014 with an expiration date of December 1, 2016, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states in relevant part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

* * *

(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."

5. Section 4301 of the Code states in relevant 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.

1 * * *

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

6 6. Section 4022 of the Code states:

7 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
8 humans or animals, and includes the following:

9 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
10 prescription," "Rx only," or words of similar import.

11 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by
12 or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
13 with the designation of the practitioner licensed to use or order use of the device.

14 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
15 prescription or furnished pursuant to Section 4006."

16 7. Section 4081 of the Code states in relevant part:

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

26 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal
27 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
28 charge, for maintaining the records and inventory described in this section."

1 8. Section 4105 of the Code states in relevant part:

2 "(a) All records or other documentation of the acquisition and disposition of dangerous
3 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
4 premises in a readily retrievable form.

5 (b) The licensee may remove the original records or documentation from the licensed
6 premises on a temporary basis for license-related purposes. However, a duplicate set of those
7 records or other documentation shall be retained on the licensed premises.

8 (c) The records required by this section shall be retained on the licensed premises for a
9 period of three years from the date of making.

10 (d) (1) Any records that are maintained electronically shall be maintained so that the
11 pharmacist-in-charge, or the pharmacist on duty if the pharmacist-in-charge is not on duty, shall,
12 at all times during which the licensed premises are open for business, be able to produce a
13 hardcopy and electronic copy of all records of acquisition or disposition or other drug or
14 dispensing-related records maintained electronically.

15 * * *

16 (f) When requested by an authorized officer of the law or by an authorized representative
17 of the board, the owner, corporate officer, or manager of an entity licensed by the board shall
18 provide the board with the requested records within three business days of the time the request
19 was made. The entity may request in writing an extension of this timeframe for a period not to
20 exceed 14 calendar days from the date the records were requested. A request for an extension of
21 time is subject to the approval of the board. An extension shall be deemed approved if the board
22 fails to deny the extension request within two business days of the time the extension request was
23 made directly to the board."

24 9. California Code of Regulations, title 16, section 1718, states:

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

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

3 10. California Code of Regulations, title 16, section 1714, subdivision (b) provides in
4 pertinent part:

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

9 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

10 11. Norco (generic – Acetaminophen and Hydrocodone) is a dangerous drug as defined
11 by section 4022 and is classified as a Schedule III controlled substance as listed in the Health and
12 Safety Code section 11056, subdivision (e).

13 **COST RECOVERY**

14 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
19 included in a stipulated settlement.

20 **STATEMENT OF FACTS**

21 13. On or about December 26, 2012, Respondent submitted a Report of Theft of Loss of
22 Controlled Substances to the Board. The Board opened an investigation and learned that 45,708
23 tablets of Norco were unaccounted for.

24 14. Respondent conducted a lengthy internal investigation into the drug loss. On or about
25 December 2011, Respondent found discrepancies comparing purchasing and dispensing records
26 for several medications. Respondent started to inventory delivered medications manually and
27 when there was any discrepancy, the schedule of pharmacists and pharmacy staff members was
28 reviewed to identify the suspect.

1 15. Respondent discovered that Norco would be stolen once a week during their weekly
2 shipments. Respondent contacted the wholesaler and requested that the Norco being delivered on
3 October 26, 2012, be labeled to specifically identify the Norco containers.

4 16. On December 26, 2012, Respondent witnessed pharmacy technician, Felipe
5 Villalobos stealing tablets of Norco from the marked box during the delivery. This incident was
6 recorded on Respondent's surveillance cameras.

7 17. According to Villalobos he stole approximately 500 to 1,000 tablets of Norco each
8 week while he was employed by Respondent. Pharmacist-In-Charge (PIC), Aurora Young
9 confirmed that Villalobos had been terminated for his actions.

10 18. Prior to opening its case against Respondent, the Board opened an investigation
11 against Villalobos. A default decision and order against Villalobos' pharmacy technician license
12 became effective on June 12, 2015.

13 19. The Board requested Respondent's audit results several times. However, as of
14 February 5, 2015, Respondent did not submit their final audit results. Therefore, the Board
15 conducted its own audit based on the documents sent by Respondent's Pharmacy Affairs
16 Coordinator, Farrah Ansari. The Board's audit period from June 9, 2011 to December 26, 2012
17 revealed that 45,708 tablets of Norco were unaccounted for during this time period.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Failure To Maintain Dangerous Drugs In A Safe And Secure Manner)**

20 20. Respondents are subject to disciplinary action under section 4301, subdivision (j) and
21 (o) for violation of California Code of Regulations, title 16, sections 1714, subdivisions (b) for
22 failure to secure the prescription department and provide effective control to prevent theft and/or
23 diversion of substantial amounts of controlled substances and dangerous drugs between June 9,
24 2011 to December 26, 2012. Complainant refers to and by this reference incorporates allegations
25 of paragraphs 13 through 19 above as though fully set forth.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Complete and Accurate Records for Controlled Substances)**

3 21. Respondent is subject to disciplinary action under section 4300 for unprofessional
4 conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with sections 4081,
5 subdivision (a) and 4105, and California Code of Regulations, title 16, Section 1718 for failure to
6 maintain a complete and accurate record for all controlled substances/dangerous drugs received,
7 sold, or otherwise disposed of by them. The Board's audit comparing acquisition and disposition
8 records from June 9, 2011 to December 26, 2012, revealed that Respondent was unable to account
9 for 45,708 tablets of Norco. Complainant refers to and by this reference incorporates allegations
10 of paragraphs 13 through 20 above as though fully set forth.

11 **DISCIPLINE CONSIDERATIONS**

12 22. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges that on or about February 12, 2014, in a prior action, the Board of Pharmacy
14 issued Citation Number CI 2012 56220 and found that Respondent was not in compliance with
15 California Code of Regulations, title 16, section 1716, which states that the pharmacist shall not
16 deviate from a prescription without the authorization of the prescriber. The circumstances
17 underlying the Citation is that on October 15, 2012, a prescription for tramadol was filled with
18 trazodone instead, and the patient ingested the incorrect medications. That Citation is now final
19 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 44289, issued to Walgreens
24 #5372;

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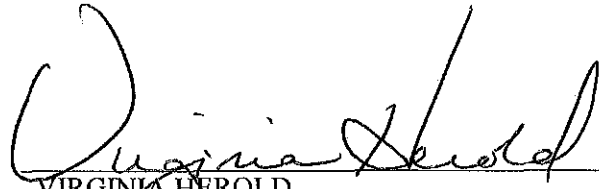
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1 2. Ordering Walgreens to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
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7
8 DATED: _____

2/27/16



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

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