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

11 In the Matter of the Accusation Against:  
12  
13 **CVS PHARMACY #6772**  
**4987 N. Fresno Street**  
**Fresno, California 93726**  
14  
15 **Original Permit Number No. PHY 50119,**  
16 **and**  
17 **KATHRYN MACY STOLTZ**  
**2917 English Ave.**  
**Louisville, KY 40206**  
18  
19 **Original Pharmacist License No. RPH 68379**  
20 Respondents.

Case No. 5563

**A C C U S A T I O N**

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 September 24, 2009, the Board of Pharmacy issued Original Permit  
27 Number PHY 50119 to CVS Pharmacy #6772 (Respondent CVS). The Original Permit Number  
28

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 June 1, 2016, unless renewed.

3 3. On or about October 22, 2012, the Board of Pharmacy issued Original Pharmacist  
4 License Number RPH 68379 to Kathryn Macy Stoltz (Respondent Stoltz). The Original  
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
6 and will expire on April 30, 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 4300 of the Code states, in pertinent part:

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

13 6. Section 4300.1 of the Code states:

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

### 19 BUSINESS AND PROFESSIONS CODE

20 7. Section 4022 of the Code states:

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

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

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

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1 **COST RECOVERY**

2 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **CONTROLLED SUBSTANCE**

7 11. "Hydrocodone w/APAP" (hydrocodone with acetaminophen tablets) is a  
8 semisynthetic narcotic analgesic, a dangerous drug as defined in Code section 4022, a Schedule II  
9 controlled substance and narcotic as defined by section 11055(b)(1)(I) of the Health and Safety  
10 Code, and a Schedule II controlled substance as defined by section 1308.12(b)(1)(vii) of Title 21  
11 of the Code of Federal Regulations.

12 **BACKGROUND**

13 **Controlled Substance Losses**

14 12. From May 1 through September 19, 2013, Respondent CVS reported a loss of 15,360  
15 tablets of hydrocodone/apap 10/325mg. This audit was conducted on September 19, 2013.

16 13. From May 1 through October 17, 2013, Respondent CVS reported a loss of 16,675  
17 tablets of hydrocodone/apap 10/325mg, resulting in an increase in loss of 1,315 tablets between  
18 September 19 and October 17, 2013. There was no explanation provided for the loss. This audit  
19 was conducted on October 17, 2013.

20 14. On or about October 25, 2013, the Board received notification from Respondent CVS  
21 of a loss of 11,945 tablets of hydrocodone/apap 10/325mg. The notification indicated the loss  
22 occurred on September 26, 2013.

23 **Pharmacists-in-Charge**

24 15. On or about October 23, 2014, Inspectors J. F. and K. R-P. inspected Respondent  
25 CVS. The Inspectors discovered that CVS had no active pharmacist-in-charge. Former  
26 Pharmacist-in-Charge Inouye dissociated on June 27, 2014. Later that day, Inspector K. R-P.  
27 received a change of pharmacist-in-charge form, indicating that an individual named Dodd would  
28 replace Inouye as pharmacist-in-charge at CVS.



1 DISCIPLINE CONSIDERATIONS

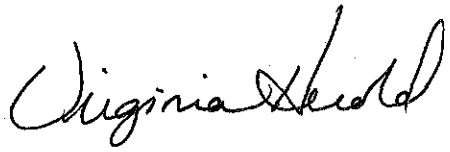
2 21. To determine the degree of discipline, if any, to be imposed on Respondent CVS,  
3 Complainant alleges that on or about May 13, 2014, in a prior action, the Board of Pharmacy  
4 issued Citation Number CI 2013 58716 based upon CVS' violation of California Code of  
5 Regulations, title 16, section 1716 (variation from prescription), when CVS dispensed prednisone  
6 50mg tablets in a bottle labeled and prescribed as primidone 50mg without prior consent of the  
7 prescriber. That Citation is now final and is incorporated by reference as if fully set forth.

8 PRAYER

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

- 11 1. Revoking or suspending Original Permit Number PHY 50119, issued to CVS
- 12 Pharmacy #6772;
- 13 2. Revoking or suspending Original Pharmacist License Number RPH 68379, issued to
- 14 Kathryn Macy Stoltz;
- 15 3. Ordering CVS Pharmacy #6722 and Kathryn Macy Stoltz to pay the Board of
- 16 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
- 17 Business and Professions Code section 125.3; and
- 18 4. Taking such other and further action as deemed necessary and proper.

19  
20  
21  
22 DATED: 3/18/16



23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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