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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **CVS LTD LIABLE CO.,**
13 **d.b.a. CVS PHARMACY NO. 5170**
14 9952 Las Tunas Dr.
Temple City, CA 91780
15 **Pharmacy Permit No. PHY 46782**
16 Respondent.

Case No. 5593
FIRST AMENDED ACCUSATION

18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Virginia Herold brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On June 9, 2004, the Board of Pharmacy issued Pharmacy Permit Number PHY 46782
24 to CVS LTD Liable Co. to do business as CVS Pharmacy No. 5170 (Respondent). Respondent's
25 pharmacy permit was in full force and effect at all times relevant to the charges brought herein.
26 The permit will expire on June 1, 2017 unless it is renewed.

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8. Section 4104 states:

(a) Every pharmacy shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license, or is discovered or known to have engaged in the theft, diversion, or self-use of dangerous drugs.

(b) Every pharmacy shall have written policies and procedures for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy.

(c) Every pharmacy shall report and provide to the board, within 14 days of the receipt or development thereof, the following information with regard to any licensed individual employed by or with the pharmacy:

(1) Any admission by a licensed individual of chemical, mental, or physical impairment affecting his or her ability to practice.

(2) Any admission by a licensed individual of theft, diversion, or self-use of dangerous drugs.

(3) Any video or documentary evidence demonstrating chemical, mental, or physical impairment of a licensed individual to the extent it affects his or her ability to practice.

(4) Any video or documentary evidence demonstrating theft, diversion, or self-use of dangerous drugs by a licensed individual.

(5) Any termination based on chemical, mental, or physical impairment of a licensed individual to the extent it affects his or her ability to practice.

(6) Any termination of a licensed individual based on theft, diversion, or self-use of dangerous drugs.

(d) The report required in subdivision (c) shall include sufficient detail to inform the board of the facts upon which the report is based, including an estimate of the type and quantity of all dangerous drugs involved, the timeframe over which the losses are suspected, and the date of the last controlled substances inventory. Upon request of the board, the pharmacy shall prepare and submit an audit involving the dangerous drugs suspected to be missing.

(e) Anyone making a report authorized or required by this section shall have immunity from any liability, civil or criminal, that might otherwise arise from the making of the report. Any participant shall have the same immunity with respect to participation in any administrative or judicial proceeding resulting from the report.

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9. 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:

...

(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 [Chapter 9: Pharmacy] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

REGULATIONS

10. California Code of Regulations, title 16, section 1714 states in pertinent part:

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

...

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting his license to not being renewed or reinstated.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Report Pharmacy Employee's Alcohol Impairment)**

3 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
4 for unprofessional conduct because it violated a provision of the Pharmacy Law, to wit, Code
5 section 4104, subdivision (c)(1). That section requires pharmacies to report to the Board any
6 admission by a licensed individual of chemical, mental, or physical impairment affecting his ability
7 to practice. The report must be made within 14 days of the admission.

8 13. Respondent failed to timely report the alcohol impairment of a pharmacy technician,
9 who is a licensed individual. On or about October 13, 2014, Respondent's staff observed that a
10 pharmacy technician was so impaired that he could not work his shift. He was driven home by
11 another pharmacy employee. On or about October 17, 2014, he admitted to his supervisor that he
12 had been under the influence of alcohol. Respondent delayed notifying the Board of the pharmacy
13 technician's admission until approximately June 22, 2015.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Lack of Operational Standards and Security)**

16 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
17 for unprofessional conduct because it violated a regulation established by the Board, to wit,
18 California Code of Regulations, title 16, section 1714, subdivision (b). That regulation requires
19 pharmacies to maintain their dangerous drugs in a safe and secure manner.

20 15. Respondent failed to maintain its dangerous drugs in a safe and secure manner.
21 An audit of the pharmacy's inventory conducted for the time period of May 1, 2013 through June
22 19, 2015, revealed that Respondent could not account for the following drugs, each of which is
23 classified as a dangerous drug under Business and Professions Code section 4022.

Dangerous Drug	Amount Unaccounted For
APAP/Codeine 120mg/12mg per 5ml syrup	17 ml
ASCOMP with Codeine	169 capsules
APAP/Codeine 300mg/30mg	921 tablets
APAP/Codeine 300 mg/60mg	383 tablets

1	Dangerous Drug	Amount Unaccounted For
2	Hydrocodone/APAP 10-325	2 units
3	Hydrocodone/APAP 5-500	1,544 units

THIRD CAUSE FOR DISCIPLINE

(Failure to Keep Current Inventory and Maintain Drug Records)

16. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), for unprofessional conduct because it violated a provision of the Pharmacy Law, to wit, Code section 4081, subdivision (a). That section requires pharmacies to keep a current inventory and preserve all records of manufacture, sale, acquisition, receipt, shipment, and disposition of dangerous drugs or dangerous devices.

17. Respondent did not preserve records of the disposition of certain dangerous drugs. For the audit period of May 1, 2013 through June 19, 2015, Respondent failed to make and preserve records showing the disposition of the dangerous drugs alleged in paragraph 15. Complainant realleges paragraph 15.

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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:

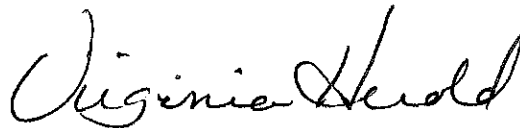
1. Revoking or suspending Pharmacy Permit Number PHY 46782, issued to CVS LTD Liable Co., doing business as CVS Pharmacy No. 5170;

2. Ordering CVS LTD Liable Co., doing business as CVS Pharmacy No. 5170, 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,

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

DATED: _____

11/14/16



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

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11 In the Matter of the Accusation Against:
12 **CVS LTD LIABLE CO.,**
13 **d.b.a. CVS PHARMACY NO. 5170;**
14 **LE TANG, Pharmacist-in-Charge**
15 9952 Las Tunas Dr.
16 Temple City, CA 91780
17 **Pharmacy Permit No. PHY 46782**
Respondent.

Case No. 5593
A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Complainant Virginia Herold brings this Accusation solely in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On June 9, 2004, the Board of Pharmacy issued Pharmacy Permit Number PHY 46782
24 to CVS LTD Liable Co. to do business as CVS Pharmacy No. 5170 (Respondent). Le Tang (RPH
25 59927) is and has been the Pharmacist-in-Charge since October 29, 2010. Respondent's pharmacy
26 permit was in full force and effect at all times relevant to the charges brought herein. The permit
27 will expire on June 1, 2016 unless it is renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following laws.

3 All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 118 of the Code states in pertinent part:

5 (b) The suspension, expiration, or forfeiture by operation of law of a license
6 issued by a board in the department, or its suspension, forfeiture, or cancellation by
7 order of the board or by order of a court of law, or its surrender without the written
8 consent of the board, shall not, during any period in which it may be renewed, restored,
9 reissued, or reinstated, deprive the board of its authority to institute or continue a
10 disciplinary proceeding against the licensee upon any ground provided by law or to
11 enter an order suspending or revoking the license or otherwise taking disciplinary action
12 against the licensee on any such ground.

13 (c) As used in this section, 'board' includes an individual who is authorized by any
14 provision of this code to issue, suspend, or revoke a license, and 'license' includes
15 'certificate,' 'registration,' and 'permit.'

16 5. Section 4300 of the Code states in pertinent part:

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

18 6. Section 4300.1 of the Code states:

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

25 **STATUTES**

26 7. Section 4081 states in pertinent part:

27 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or
28 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.

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1 8. Section 4104 states:

2 (a) Every pharmacy shall have in place procedures for taking action to protect the
3 public when a licensed individual employed by or with the pharmacy is discovered or
4 known to be chemically, mentally, or physically impaired to the extent it affects his or
5 her ability to practice the profession or occupation authorized by his or her license, or is
6 discovered or known to have engaged in the theft, diversion, or self-use of dangerous
7 drugs.

8 (b) Every pharmacy shall have written policies and procedures for addressing
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10 dangerous drugs, among licensed individuals employed by or with the pharmacy.

11 (c) Every pharmacy shall report and provide to the board, within 14 days of the
12 receipt or development thereof, the following information with regard to any licensed
13 individual employed by or with the pharmacy:

14 (1) Any admission by a licensed individual of chemical, mental, or physical
15 impairment affecting his or her ability to practice.

16 (2) Any admission by a licensed individual of theft, diversion, or self-use of
17 dangerous drugs.

18 (3) Any video or documentary evidence demonstrating chemical, mental, or
19 physical impairment of a licensed individual to the extent it affects his or her ability to
20 practice.

21 (4) Any video or documentary evidence demonstrating theft, diversion, or self-use
22 of dangerous drugs by a licensed individual.

23 (5) Any termination based on chemical, mental, or physical impairment of a
24 licensed individual to the extent it affects his or her ability to practice.

25 (6) Any termination of a licensed individual based on theft, diversion, or self-use
26 of dangerous drugs.

27 (d) The report required in subdivision (c) shall include sufficient detail to inform
28 the board of the facts upon which the report is based, including an estimate of the type
and quantity of all dangerous drugs involved, the timeframe over which the losses are
suspected, and the date of the last controlled substances inventory. Upon request of the
board, the pharmacy shall prepare and submit an audit involving the dangerous drugs
suspected to be missing.

 (e) Anyone making a report authorized or required by this section shall have
immunity from any liability, civil or criminal, that might otherwise arise from the making
of the report. Any participant shall have the same immunity with respect to participation
in any administrative or judicial proceeding resulting from the report.

1 9. Section 4301 of the Code states in pertinent part:

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

6 ...

7 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violation of or conspiring to violate any provision or term of this chapter
9 [Chapter 9: Pharmacy] or of the applicable federal and state laws and regulations
10 governing pharmacy, including regulations established by the board or by any other
11 state or federal regulatory agency.

12 REGULATIONS

13 10. California Code of Regulations, title 16, section 1714 states in pertinent part:

14 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
15 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
16 secured and distributed. The pharmacy shall be of sufficient size and unobstructed area
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20 prescription department, including provisions for effective control against theft or
21 diversion of dangerous drugs and devices, and records for such drugs and devices.
22 Possession of a key to the pharmacy where dangerous drugs and controlled substances
23 are stored shall be restricted to a pharmacist.

24 COST RECOVERY

25 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
28 case, with failure of the licentiate to comply subjecting his license to not being renewed or
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1 FIRST CAUSE FOR DISCIPLINE

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9 who is a licensed individual. On or about October 13, 2014, Respondent's staff observed that a
10 pharmacy technician was so impaired that he could not work his shift. He was driven home by
11 another pharmacy employee. On or about October 17, 2014, he admitted to his supervisor that he
12 had been under the influence of alcohol. Respondent delayed notifying the Board of the pharmacy
13 technician's admission until approximately June 22, 2015.

14 SECOND CAUSE FOR DISCIPLINE

15 (Lack of Operational Standards and Security)

16 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
17 for unprofessional conduct because it violated a regulation established by the Board, to wit,
18 California Code of Regulations, title 16, section 1714, subdivision (b). That regulation requires
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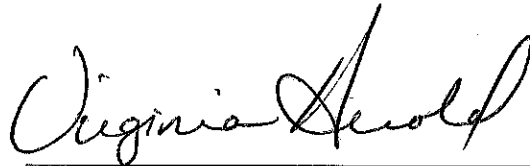
PRAYER

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 46782, issued to CVS LTD Liable Co., doing business as CVS Pharmacy No. 5170; Le Tang, Pharmacist-in-Charge;
2. Ordering CVS LTD Liable Co., doing business as CVS Pharmacy No. 5170; Le Tang, Pharmacist-in-Charge, 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,
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/30/16



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

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