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

11 In the Matter of the Accusation Against:

Case No. 5710

12 **WALGREENS CORPORATION,**  
13 **dba WALGREENS #06036**  
14 **4051 Douglas Boulevard**  
15 **Granite Bay, CA 95746**

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

16 **Pharmacy Permit No. PHY 52637**

17 **and**

18 **ROBERT PAUL LESIW**  
19 **4051 Douglas Boulevard**  
20 **Granite Bay, CA 95646**

21 **Pharmacist License No. RPH 56947**

22 Respondents.

23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about June 11, 2002, the Board issued Pharmacy Permit Number PHY 45983 to  
28 Walgreens Corporation ("Respondent Walgreens"), doing business as Walgreens #06036. On or  
about October 22, 2011, Robert Paul Lesiw ("Respondent Lesiw") became the pharmacist-in-  
charge until February 4, 2015. Pharmacy Permit Number PHY 45983 expired on December 31,

1 2014, and was canceled on February 4, 2015, pursuant to change in ownership. On or about  
2 December 31, 2014, the Board issued Pharmacy Permit Number PHY 52637 to Respondent  
3 Walgreens. On or about December 23, 2014, Respondent Lesiw became the pharmacist-in-  
4 charge. Pharmacy Permit Number PHY 52637 is in full force and effect and will expire on  
5 December 1, 2016, unless renewed.

6 3. On or about April 11, 2005, the Board issued Pharmacist License Number RPH  
7 56947 to Respondent Lesiw. The pharmacist license was in full force and effect at all times  
8 relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

9 **JURISDICTION/STATUTORY AND REGULATORY 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 ("Code") unless otherwise  
12 indicated.

13 5. Code section 4300 states, in pertinent part:

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

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

17 (1) Suspending judgment.

18 (2) Placing him or her upon probation.

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

21 (4) Revoking his or her license.

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

23 6. Code section 4300.1 states:

24 The expiration, cancellation, forfeiture, or suspension of a board-issued  
25 license by operation of law or by order or decision of the board or a court of law, the  
26 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  
27 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. Code section 4301 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:

....

- (b) Incompetence.
- (c) Gross negligence.

....

(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.

....

(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 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.

....

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board . . .

8. Code section 4076 states, in pertinent part:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

....

(7) The strength of the drug or drugs dispensed . . .

9. Code section 4081 states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, or 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, 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.

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

5 10. Code section 4105 states, in pertinent part:

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

9 . . . .

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

12 (d) Any records that are maintained electronically shall be maintained so  
13 that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is  
14 not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the  
15 designated representative on duty, shall, at all times during which the licensed  
16 premises are open for business, be able to produce a hard copy and electronic copy of  
17 all records of acquisition or disposition or other drug or dispensing-related records  
18 maintained electronically . . .

19 11. Code section 4113, subdivision (c), states that “[t]he pharmacist-in-charge shall be  
20 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining  
21 to the practice of pharmacy.”

22 12. Code section 4156 states that “[a] pharmacy corporation shall not do, or fail to do,  
23 any act where doing or failing to do the act would constitute unprofessional conduct under any  
24 statute or regulation. In the conduct of its practice, a pharmacy corporation shall observe and be  
25 bound by the laws and regulations that apply to a person licensed under this chapter.”

26 13. Code section 4332 states:

27 Any person who fails, neglects, or refuses to maintain the records  
28 required by Section 4081 or who, when called upon by an authorized officer or a  
member of the board, fails, neglects, or refuses to produce or provide the records  
within a reasonable time, or who willfully produces or furnishes records that are false,  
is guilty of a misdemeanor.

14. Health and Safety Code section 11200 states, in pertinent part:

. . . .

(b) No prescription for a Schedule III or IV substance may be refilled  
more than five times and in an amount, for all refills of that prescription taken  
together, exceeding a 120-day supply . . .

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1 15. Title 16, California Code of Regulations ("CCR"), section 1707 states, in pertinent  
2 part:

3 . . . .

4 (g) Notwithstanding the requirements of this section, any entity licensed  
5 by the board may store the records described in subdivisions (a), (b) and (c) of  
6 Section 4105 of the Business and Professions Code in a storage area at the same  
address or adjoining the licensed premises without obtaining a waiver from the board  
if the following conditions are met:

7 . . . .

8 (2) The storage area is maintained so that the records are secure and so  
9 that the confidentiality of any patient-related information is maintained.

10 16. Title 16, CCR, section 1714 states, in pertinent part:

11 . . . .

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

15 . . . .

16 (d) Each pharmacist while on duty shall be responsible for the security of  
17 the prescription department, including provisions for effective control against theft or  
diversion of dangerous drugs and devices, and records for such drugs and devices . . .

18 17. Title 16, CCR, section 1715.6 states that "[t]he owner shall report to the Board within  
19 thirty (30) days of discovery of any loss of the controlled substances, including their amounts and  
20 strengths."

21 18. Title 16, CCR, section 1718 states:

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

24 The controlled substances inventories required by Title 21, CFR, Section  
25 1304 shall be available for inspection upon request for at least 3 years after the date of  
the inventory.

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19. Title 16, CCR, section 1735.2 states, in pertinent part:

....

(j) Prior to allowing any drug product to be compounded in a pharmacy, the pharmacist-in-charge shall complete a self-assessment for compounding pharmacies developed by the board. (Incorporated by reference is "Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-Assessment" Form 17M-39 Rev. 02/12.) That form contains a first section applicable to all compounding, and a second section applicable to sterile injectable compounding. The first section must be completed by the pharmacist-in-charge before any compounding is performed in the pharmacy. The second section must be completed by the pharmacist-in-charge before any sterile injectable compounding is performed in the pharmacy. The applicable sections of the self-assessment shall subsequently be completed before July 1 of each odd-numbered year, within 30 days of the start of a new pharmacist-in-charge, and within 30 days of the issuance of a new pharmacy license. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

20. Title 16, CCR, section 1735.4 states, in pertinent part:

(a) In addition to the labeling information required under Business and Professions Code section 4076, the label of a compounded drug product shall contain the generic name(s) of the principal active ingredient(s) . . .

**COST RECOVERY**

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

**DRUG CLASSIFICATIONS**

22. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

Alprazolam is used to treat anxiety. "Xanax" is a brand of alprazolam.

23. Carafate is a dangerous drug pursuant to Code section 4022 and is used to treat stomach ulcers.

24. Hydrocodone/acetaminophen (APAP) is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a Schedule II controlled

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1 substance pursuant to Title 21, Code of Federal Regulations, section 1308.12.<sup>1</sup>

2 Hydrocodone/acetaminophen is also a dangerous drug pursuant to Code section 4022.

3 Hydrocodone/acetaminophen is used to treat pain. “Norco” and “Vicodin” are brands of  
4 hydrocodone/acetaminophen.

5 25. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety  
6 Code section 11055, subdivision (b)(1)(J), and a dangerous drug pursuant to Code section 4022.  
7 Hydromorphone is used to treat pain. “Dilaudid” is a brand of hydromorphone.

8 26. Lidocaine is a dangerous drug pursuant to Code section 4022 and is used as a local  
9 anesthetic.

10 27. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code  
11 section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.  
12 Oxycodone is used to treat pain. “Percolone” and “Roxicodone” are brands of oxycodone.

13 28. Oxycodone extended release is a Schedule II controlled substance pursuant to Health  
14 and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code  
15 section 4022. Oxycodone extended release is used to treat pain. “Oxycontin” is a brand of  
16 oxycodone extended release.

17 29. Oxycodone/APAP is a Schedule II controlled substance pursuant to Health and Safety  
18 Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.  
19 Oxycodone/APAP is used to treat pain. “Percocet” is a brand of oxycodone/APAP.

20 30. Promethazine with codeine syrup is a Schedule V controlled substance pursuant to  
21 Health and Safety Code section 11058, subdivision (c)(1), and a dangerous drug pursuant to Code  
22 section 4022. Promethazine with codeine syrup is used to treat cough. “Phenergan with Codeine  
23 Syrup” is a brand of promethazine with codeine syrup.

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26 <sup>1</sup> Hydrocodone/acetaminophen was rescheduled from a Schedule III to Schedule II  
27 controlled substance via the Controlled Substances Act (12 CFR section 1308.12) effective  
28 October 6, 2014.

1 **FACTUAL ALLEGATIONS**

2 31. On or about March 26, 2015, the Board received a Report of Theft or Loss of  
3 Controlled Substances (DEA 106 form) from Walgreens #06036. The pharmacy reported a loss  
4 of 568 ml of hydrocodone-containing liquids and 1,679 tablets of hydrocodone-containing drugs  
5 due to employee theft.

6 32. On April 2, 2015, the Board sent Respondent Lesiw ("Lesiw") a letter requesting,  
7 among other things, a detailed explanation of the circumstances surrounding the theft. Lesiw sent  
8 the Board a written statement, stating that he discovered a bottle of 100 tablets of Norco 10/325  
9 mg missing from Walgreens #06036 in November 2014. Drug audits and video surveillance were  
10 conducted. In March 2015, video evidence was found of the theft. Employee R. S. (not a  
11 licensee of the Board), admitted to the theft and was terminated.

12 **Board Inspection of May 13, 2015 and Subsequent Investigation**

13 33. A Board inspector went to Walgreens #06036 to conduct an inspection and  
14 investigate the reported losses of controlled substances from the pharmacy. The inspector met  
15 with registered pharmacy technician T. ("TCH T."), who identified herself as the store manager.  
16 TCH T. stated that R. S. was employed at Walgreens from April 27, 2012 until March 10, 2015,  
17 when he was terminated for stealing drugs, and that the last position he held was front end shift  
18 lead. TCH T. explained that the shift lead helps with register issues and overrides, calls patients  
19 to pick up prescriptions, and returns drugs to stock that are not picked up by patients. TCH T.  
20 stated that R. S. was not hired as a pharmacy employee.

21 34. The inspector observed that the pharmacy had a full door which was secured with a  
22 push button combination lock. Throughout the inspection, the inspector observed TCH T. use the  
23 combination to enter the pharmacy. The inspector also saw another store employee use the  
24 combination to enter the pharmacy several times. TCH T. stated that it was company practice to  
25 allow front end employees to enter the pharmacy to assist with various functions and that front  
26 end employees did not have any pharmacy training. TCH T. also stated that front end employees  
27 were still allowed access to the pharmacy and the drug stock area following the theft and while  
28 audits of the losses were still being conducted.



1           35. TCH T. took the inspector to the store warehouse area (Walgreens #06036 stored  
2 pharmacy records in this area and in the pharmacy). The inspector observed boxes of prescription  
3 records stored on open shelves. The boxes contained original prescriptions that had previously  
4 been dispensed as well as original controlled substance prescriptions. The documents contained  
5 confidential patient information, including names, dates of birth, addresses, telephone numbers,  
6 medication therapy, and/or medical conditions. TCH T. told the inspector that the records should  
7 not be stored on the open shelves and showed him a locked metal cabinet where the records were  
8 to be kept. The inspector observed that the door to the record storage area was unlocked and that  
9 all store employees and vendors had access to this area.

10           36. The inspector reviewed the pharmacy's compounding records and found that they  
11 were engaged in compounding from July 2013, through the date of the inspection. The inspector  
12 requested the compounding self-assessment; however, neither staff pharmacist E. ("RPH E.") nor  
13 TCH T. could find the document. The inspector obtained 13 compounding records dated between  
14 January 6, 2015 and May 12, 2015, and had the pharmacy staff print copies of the prescription  
15 labels for the 13 products dispensed. The inspector found that three of the 13 compounds were  
16 labeled and dispensed without the principal active ingredients or strengths listed on the  
17 prescription labels.

18           37. The inspector had RPH E. complete a stock on hand report of all hydrocodone-  
19 containing products in the pharmacy. The inspector issued an Inspection Report and left a copy  
20 with RPH E. The inspector requested drug audits for all hydrocodone drugs from March 10, 2015  
21 to May 13, 2015. The records were to be provided to the inspector within 7 days.

22           38. On or about June 8, 2015, the inspector sent Lesiw a letter requesting drug audits of  
23 all hydrocodone drugs from March 10, 2015 to May 13, 2015, and from the first inventory after  
24 April 27, 2012 to March 10, 2015.

25           39. On or about July 2, 2015, the inspector sent Lesiw another letter requesting drug  
26 audits of all hydrocodone drugs from March 10, 2015 to May 13, 2015, and from the first  
27 inventory after April 27, 2012 to March 10, 2015. The inspector also requested copies of certain  
28 prescriptions, including any and all documents regarding each instance of refill.

1           40. On or about July 17, 2015, the inspector received various documents which Lesiw  
2 sent to the Board, including a written statement from R. S. dated March 10, 2015. R. S. admitted  
3 in his statement that he stole controlled substances from the pharmacy, including 109 tablets of  
4 Vicodin ES 7.5/300 mg and 3 or 4 bottles of promethazine/codeine liquid. Lesiw also provided  
5 copies of prescription documents and records pertaining to each refill. The inspector found in  
6 reviewing the prescriptions, refill records, and related dispensing records that controlled  
7 substance prescriptions were refilled by Walgreens #06036 beyond the 120 days allowed by law.

8           41. On or about July 22, 2015, the inspector sent Lesiw, Walgreens #06036, and  
9 Walgreen Co. a letter, stating that the above audits had been formally requested on three separate  
10 occasions, but still had not been provided to the inspector, and that the continued failure to  
11 provide the records was preventing him from completing his investigation. The inspector  
12 requested that the audits be sent to him no later than three days from receipt of the letter.

13           42. On or about July 23, 2015, RPH E. faxed the inspector the pharmacy's inventory  
14 records for March 10, 2015.

15           43. On or about July 27, 2015, Lesiw sent the inspector an email with some of the audit  
16 information attached, including a summary of hydrocodone dispensing and acquisition data for  
17 Walgreens #06036 for the period of March 10, 2015 to May 13, 2015.

18           44. On or about July 29, 2015, the inspector sent S. S., District Manager for Walgreens,  
19 an email, advising him that following the theft of the hydrocodone, the pharmacy continued to  
20 incur losses totaling over 5,000 tablets of the drug from March 10, 2015 to May 13, 2015.

21           45. On or about August 24, 2015, the inspector sent Lesiw, S.S., Walgreens #06036,  
22 Walgreen Co., and M. M. (Senior Business Analyst, Pharmaceutical Integrity, Walgreen Co.) a  
23 letter, stating that the hydrocodone audit from the first inventory after April 27, 2012 to March  
24 10, 2015, still had not been provided. The inspector stated further that a copy of the first  
25 controlled substance inventory at Walgreens #06036 after April 27, 2012, must be provided  
26 immediately along with all acquisition and disposition data from the date of that inventory to the  
27 date of the hydrocodone stock on hand counts (the counts conducted on May 13, 2015).

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1           **Board Inspection of August 31, 2015**

2           46. On or about August 31, 2015, the inspector still had not received the audit  
3 information, and returned to the pharmacy to conduct a second inspection. The inspector saw a  
4 non-pharmacy employee use the combination lock and enter the pharmacy. RPH E. advised the  
5 inspector that it was still the practice for front end employees to enter the pharmacy and the drug  
6 stock area. Later, the inspector had TCH T. take him to the warehouse area. TCH T. showed the  
7 inspector the locked metal cabinet. The inspector observed several boxes stacked on top of the  
8 cabinet. TCH T. took one of the boxes down, opened it, and found various "Vaccination  
9 Administration Records." The documents contained confidential patient-related information.

10           47. The inspector met with Lesiw and asked him if he had any communications regarding  
11 the drug audits he conducted between November 2014 and March 10, 2015. Lesiw provided the  
12 inspector with copies of various emails that were exchanged between him and the Walgreens  
13 security manager. The inspector found in reviewing the emails that drug losses were discovered  
14 at the pharmacy between December 8, 2014 and January 6, 2015, involving hydrocodone-  
15 containing drugs. Walgreens #06036 ultimately reported the losses to the Board on March 26,  
16 2015; however, the pharmacy failed to report the losses to the Board within 30 days of  
17 discovering each loss.

18           48. During the inspection, the inspector obtained copies of the pharmacy's controlled  
19 substance inventories for June 9, 2012, June 9, 2013, June 9, 2014, and June 9, 2015. The  
20 inspector issued an Inspection Report, requesting all acquisition and disposition records in  
21 electronic format for all controlled substances from the beginning of business on June 10, 2012 to  
22 the close of business on June 9, 2015.

23           49. On or about September 2, 2015, the inspector received controlled substance  
24 dispensing and disposition data for Walgreens #06036 from June 10, 2012 to June 9, 2015.

25           50. The inspector conducted a drug audit using the June 9, 2012 and June 9, 2015,  
26 inventories and the acquisition and disposition records. The inspector found, among other things,  
27 that Walgreens #06036 had a significant shortage of controlled substances, beyond the drugs and  
28 amounts reported as missing by the pharmacy, for the period from June 9, 2012 and June 9, 2015.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**

3 **So that Drugs Were Safely and Properly Secured)**

4 51. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
5 pursuant to Code section 4301, subdivision (o), in that Respondent failed to maintain Walgreens  
6 #06036 and its facilities, space, fixtures and/or equipment so that drugs were safely and properly  
7 secured, in violation of Title 16, CCR, section 1714, subdivision (b), as follows:

8 a. In or about November 2014, Respondent Lesiw discovered that a bottle of 100 tablets  
9 of Norco 10/325 mg was missing from Walgreens #06036. The pharmacy found through  
10 subsequent audits and video surveillance that a total of 568 ml of hydrocodone-containing liquids  
11 and 1,679 tablets of hydrocodone-containing drugs, Schedule II controlled substances, were  
12 missing and that employee R. S., a front end shift lead, had entered the pharmacy on various  
13 occasions between November 2014 and March 2015, and had stolen the drugs. The Board found  
14 during the inspection of May 13, 2015, that Walgreens #06036 had allowed front end employees,  
15 including R. S., to enter the pharmacy and the drug stock area. Further, despite their discovery of  
16 the losses of controlled substances, and while the losses were still occurring, Walgreens #06036  
17 continued to allow non-pharmacy employees access to the pharmacy and the drug stock area. In  
18 fact, non-pharmacy employees were still allowed access to the pharmacy and the drug stock area  
19 as of the Board inspections of May 13, 2015, and August 31, 2015.

20 b. The Board determined through the inspections of May 13, 2015 and August 31, 2015,  
21 their investigation, and subsequent drug audit that Walgreens #06036 had a significant shortage  
22 of controlled substances, beyond the drugs and amounts reported as missing by the pharmacy, for  
23 the period from June 9, 2012 and June 9, 2015, as follows.

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<b>Drug</b>	<b>Amount of Theft/Loss</b>
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169

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<b>Drug</b>	<b>Amount of Theft/Loss</b>
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
<b>Total</b>	<b>10,465</b>

**SECOND CAUSE FOR DISCIPLINE**

**(Failure to Maintain an Accurate Current Inventory of All Dangerous Drugs)**

52. Respondent Walgreens is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent violated Code sections 4081, subdivisions (a) and (b), and 4105, subdivisions (a), (c), and (d), and Title 16, CCR, section 1718, as follows:

a. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in significant losses of the following controlled substances:

<b>Drug</b>	<b>Amount of Theft/Loss</b>
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
<b>Total</b>	<b>10,465</b>

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1 b. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an  
2 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in overages of  
3 the following controlled substances:

4 Drug	Amount of Overage
5 Norco 10/325 mg	290
6 oxycodone/APAP 5/325 mg	374
7 Vicodin 5/300 mg	302
<b>Total</b>	<b>966</b>

8 c. Respondent failed to maintain its electronic records of acquisition and disposition so  
9 that Respondent Lesiw, the pharmacist-in-charge, and/or the pharmacist on duty were able to  
10 produce a hardcopy and electronic copy of the records during business hours.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Report Loss of Controlled Substances)**

13 53. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
14 pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent violated Title 16,  
15 CCR, section 1715.6, as follows:

16 a. Respondent failed to report to the Board the loss of the controlled substance Norco;  
17 i.e., the bottle of 100 tablets of Norco 10/325 mg, within 30 days of discovery of the loss (in or  
18 about November 2014). Further, Respondent failed to report to the Board additional losses of  
19 Schedule II controlled substances, hydrocodone-containing liquids and hydrocodone-containing  
20 products, until March 26, 2015, when, in fact, those losses occurred between November 2014 and  
21 March 2015.

22 b. Respondent failed to report to the Board the loss of the controlled substances Vicodin  
23 ES 7.5/300 and promethazine/codeine liquid, which former Walgreens employee R. S. admitted  
24 taking in his written statement, as set forth in paragraph 40 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Incompetence)**

3 54. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
4 pursuant to Code section 4301, subdivision (b), in that Respondent committed acts or omissions  
5 constituting incompetence, as set forth in paragraph 51 above.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 55. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
9 pursuant to Code section 4301, subdivision (c), in that Respondent committed acts or omissions  
10 constituting gross negligence, as set forth in paragraph 51 above.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Subverting an Investigation of the Board)**

13 56. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
14 pursuant to Code section 4301, subdivision (q), in that Respondent engaged in conduct that  
15 subverted or attempted to subvert an investigation of the Board, as follows: On and between May  
16 13, 2015, and August 24, 2015, the Board's inspector made repeated requests for Respondent's  
17 drug audits of all hydrocodone drugs from the first inventory after April 27, 2012 to March 10,  
18 2015. Respondent failed, neglected, or refused to produce the records, preventing the inspector  
19 from completing his investigation and requiring him to conduct another pharmacy inspection on  
20 August 31, 2015.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Storage Area to Ensure Records were Secure)**

3 57. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
4 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,  
5 section 1707, subdivision (g)(2), by failing to maintain its records storage area so that the records  
6 were secure and so that the confidentiality of any patient-related information was maintained, as  
7 follows:

8 a. On or about May 13, 2015, Respondent stored original prescriptions that had  
9 previously been dispensed, as well as controlled substance prescriptions, on open shelves in the  
10 warehouse area of its store rather than in the locked metal cabinet in the warehouse when, in fact,  
11 the documents contained confidential patient information, as set forth in paragraph 35 above.  
12 Further, Respondent failed to ensure that the door to the warehouse area was locked, allowing  
13 store employees and vendors access to this area.

14 b. On or about August 31, 2015, Respondent stored boxes containing confidential  
15 patient information, including Vaccination Administration Records, on top of the locked metal  
16 cabinet in the store warehouse area rather than inside the cabinet.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Failure to Complete Compounding Self-Assessment)**

19 58. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
20 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,  
21 section 1735.2, subdivision (j), as follows: On or about May 13, 2015, Respondent failed to  
22 complete or have available at the pharmacy a compounding self-assessment, as set forth in  
23 paragraph 36 above.

24 **NINTH CAUSE FOR DISCIPLINE**

25 **(Failure to Properly Label Compounded Drug Products)**

26 59. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
27 pursuant to Code section 4301, subdivision (o), in that Respondent violated Code section 4076,  
28 subdivision (a)(7), and Title 16, CCR, section 1735.4, subdivision (a), as follows: Respondent



1 compounded and dispensed prescriptions with labels that failed to identify the principal active  
 2 ingredients and strengths of the compounded prescription preparations, as follows:

Rx Number	Date filled	Compound record Ingredients	Label
857134	01/08/2015	lidocaine viscous Q-dryl Rulox	Magic Mouthwash
872786	03/26/2015	carafate Q-dryl Rulox	Mouth Wash
880141	05/05/2015	Rulox Q-Dryl lidocaine viscous	Magic

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Restrictions on Dispensing or Refilling)**

12 60. Respondent Walgreens is subject to disciplinary action for unprofessional conduct  
 13 pursuant to Code section 4301, subdivision (j), in that Respondent violated Health and Safety  
 14 Code section 11200, as follows: On and between June 1, 2012 and June 15, 2015, Respondent  
 15 refilled and dispensed prescriptions for Schedule III and/or IV controlled substances beyond the  
 16 limits allowed by law in that the prescriptions totaled more than a 120-day supply or more than 5  
 17 refills, as follows:

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
709296	zolpidem tartrate	30	6	180	180	30
736224	APAP/hydrocodone	120	6	720	180	120
751643	zolpidem tartrate	30	6	180	180	30
754048	carisoprodol	30	6	180	180	30
768943	zolpidem tartrate	30	6	180	180	30
783327	zolpidem tartrate	30	6	180	180	30
788936	estrogens/methyl testosterone	30	6	180	180	30
831330	alprazolam	90	3	270	270	60

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
730037	clonazepam	90	6	540	180	90
688625	zolpidem tartrate	30	6	180	180	30
690209	clonazepam	90	6	540	180	90
728887	zolpidem tartrate	30	6	180	180	30
732305	clonazepam	30	6	180	180	30
735099	clonazepam	30	6	180	180	30
737527	estrogens/methyl testosterone	30	6	180	180	30
745284	zolpidem tartrate	30	6	180	180	30
798206	Ambien CR	30	6	180	180	30
806829	phentermine hydrochloride	30	6	180	180	30
811086	Androgel	75	6	450	180	75
813685	clonazepam	90	6	540	180	90
719926	zolpidem tartrate	30	6	180	180	30
722652	carisoprodol	30	6	180	180	30
720933	carisoprodol	150	6	900	180	150
753368	zolpidem tartrate	30	6	180	180	30
					<b>Total</b>	<b>1,185</b>

**ELEVENTH CAUSE FOR DISCIPLINE**

**(Failure to Maintain Pharmacy, Fixtures, and Equipment**

**So that Drugs Were Safely and Properly Secured)**

61. Respondent Lesiw is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (o), in that Respondent failed to maintain Walgreens #06036 and its facilities, space, fixtures and/or equipment so that drugs were safely and properly secured, in violation of Title 16, CCR, section 1714, subdivision (b), as follows:

a. In or about November 2014, Respondent Lesiw discovered that a bottle of 100 tablets of Norco 10/325 mg was missing from Walgreens #06036. The pharmacy found through

1 subsequent audits and video surveillance that a total of 568 ml of hydrocodone-containing liquids  
 2 and 1,679 tablets of hydrocodone-containing drugs, Schedule II controlled substances, were  
 3 missing, and that employee R. S., a front end shift lead, had entered the pharmacy on various  
 4 occasions between November 2014 and March 2015, and had stolen the drugs. The Board found  
 5 during the inspection of May 13, 2015, that Walgreens #06036 had allowed front end employees,  
 6 including R. S., to enter the pharmacy and the drug stock area. Further, despite their discovery of  
 7 the losses of controlled substances, and while the losses were still occurring, Walgreens #06036  
 8 continued to allow non-pharmacy employees access to the pharmacy and the drug stock area. In  
 9 fact, non-pharmacy employees were still allowed access to the pharmacy and the drug stock area  
 10 as of the Board inspections of May 13, 2015, and August 31, 2015.

11 b. The Board determined through the inspections of May 13, 2015 and August 31, 2015,  
 12 their investigation, and subsequent drug audit that Walgreens #06036 had a significant shortage  
 13 of controlled substances, beyond the drugs and amounts reported as missing by the pharmacy, for  
 14 the period from June 9, 2012 and June 9, 2015, as follows.

Drug	Amount of Theft/Loss
alprazolam 0.5 mg	1805
alprazolam 2 mg	1146
hydrocodone/APAP 10/325 mg	916
hydrocodone/APAP solution 7.5/325	1658
hydrocodone/APAP solution 7.5/500	2636
hydromorphone 4 mg	169
oxycodone 30 mg	288
oxycodone/APAP 10/325 mg	247
Oxycontin 80 mg	120
promethazine/codeine syrup	1241
Vicodin ES 7.5/300 mg	239
<b>Total</b>	<b>10,465</b>

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 24 **TWELFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain an Accurate Current Inventory of All Dangerous Drugs)**

26 62. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
 27 pursuant to Code section 4301, subdivision (o), in that Respondent violated Code sections 4081,  
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1 subdivisions (a) and (b), and 4105, subdivisions (a), (c), and (d), and Title 16, CCR, section 1718,  
2 as follows:

3 a. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an  
4 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in significant  
5 losses of the following controlled substances:

6 Drug	Amount of Theft/Loss
7 alprazolam 0.5 mg	1805
8 alprazolam 2 mg	1146
9 hydrocodone/APAP 10/325 mg	916
10 hydrocodone/APAP solution 7.5/325	1658
11 hydrocodone/APAP solution 7.5/500	2636
12 hydromorphone 4 mg	169
13 oxycodone 30 mg	288
14 oxycodone/APAP 10/325 mg	247
15 Oxycontin 80 mg	120
16 promethazine/codeine syrup	1241
17 Vicodin ES 7.5/300 mg	239
18 <b>Total</b>	<b>10,465</b>

15 b. On and between June 9, 2012 and June 9, 2015, Respondent failed to maintain an  
16 accurate current inventory of all dangerous drugs in Walgreens #06036, resulting in overages of  
17 the following controlled substances:

18 Drug	Amount of Overage
19 Norco 10/325 mg	290
20 oxycodone/APAP 5/325 mg	374
21 Vicodin 5/300 mg	302
22 <b>Total</b>	<b>966</b>

22 c. Respondent failed to maintain Walgreens #06036's electronic records of acquisition  
23 and disposition so that he and/or the pharmacist on duty were able to produce a hardcopy and  
24 electronic copy of the records during business hours.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Report Loss of Controlled Substances)**

3 63. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
4 pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent violated Title 16,  
5 CCR, section 1715.6, as follows:

6 a. Respondent failed to report to the Board the loss of the controlled substance Norco;  
7 i.e., the bottle of 100 tablets of Norco 10/325 mg, within 30 days of discovery of the loss (in or  
8 about November 2014). Further, Respondent failed to report to the Board additional losses of  
9 Schedule II controlled substances, hydrocodone-containing liquids and hydrocodone-containing  
10 products, until March 26, 2015, when, in fact, those losses occurred between November 2014 and  
11 March 2015.

12 b. Respondent failed to report to the Board the loss of the controlled substances Vicodin  
13 ES 7.5/300 and promethazine/codeine liquid, which former Walgreens employee R. S. admitted  
14 taking in his written statement, as set forth in paragraph 40 above.

15 **FOURTEETH CAUSE FOR DISCIPLINE**

16 **(Incompetence)**

17 64. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
18 pursuant to Code section 4301, subdivision (b), in that Respondent committed acts or omissions  
19 constituting incompetence, as set forth in paragraph 61 above.

20 **FIFTEENTH CAUSE FOR DISCIPLINE**

21 **(Gross Negligence)**

22 65. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
23 pursuant to Code section 4301, subdivision (c), in that Respondent committed acts or omissions  
24 constituting gross negligence, as set forth in paragraph 61 above.

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1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Storage Area to Ensure Records were Secure)**

3 66. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
4 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,  
5 section 1707, subdivision (g)(2), by failing to maintain Walgreens #06036's records storage area  
6 so that the records were secure and so that the confidentiality of any patient-related information  
7 was maintained, as follows:

8 a. On or about May 13, 2015, Respondent stored original prescriptions that had  
9 previously been dispensed, as well as controlled substance prescriptions, on open shelves in the  
10 warehouse area of Respondent Walgreen's store rather than in the locked metal cabinet in the  
11 warehouse when, in fact, the documents contained confidential patient information, as set forth in  
12 paragraph 35 above. Further, Respondent failed to ensure that the door to the warehouse area was  
13 locked, allowing store employees and vendors access to this area.

14 b. On or about August 31, 2015, Respondent stored boxes containing confidential  
15 patient information, including Vaccination Administration Records, on top of the locked metal  
16 cabinet in the store warehouse area rather than inside the cabinet.

17 **SEVENTEENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Complete Compounding Self-Assessment)**

19 67. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
20 pursuant to Code section 4301, subdivision (o), in that Respondent violated Title 16, CCR,  
21 section 1735.2, subdivision (j), as follows: On or about May 13, 2015, Respondent failed to  
22 complete or have available at the pharmacy a compounding self-assessment, as set forth in  
23 paragraph 36 above.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Properly Label Compounded Drug Products)**

26 68. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
27 pursuant to Code section 4301, subdivision (o), in that Respondent, as pharmacist-in-charge,  
28 failed to ensure compliance with Code section 4076, subdivision (a)(7), and Title 16, CCR,

1 section 1735.4, subdivision (a), in that Respondent allowed for compounded and dispensed  
 2 prescriptions with labels that failed to identify the principal active ingredients and strengths of the  
 3 compounded prescription preparations, as follows:

Rx Number	Date filled	Compound record Ingredients	Label
857134	01/08/2015	lidocaine viscous Q-dryl Rulox	Magic Mouthwash
872786	03/26/2015	carafate Q-dryl Rulox	Mouth Wash
880141	05/05/2015	Rulox Q-Dryl lidocaine viscous	Magic

**NINETEENTH CAUSE FOR DISCIPLINE**

**(Failure to Comply with Restrictions on Dispensing or Refilling)**

69. Respondent Lesiw is subject to disciplinary action for unprofessional conduct  
 pursuant to Code section 4301, subdivision (j), in that Respondent violated Health and Safety  
 Code section 11200, as follows: On and between June 1, 2012 and June 15, 2015, Respondent  
 himself, and as pharmacist-in-charge, refilled and dispensed prescriptions for Schedule III and/or  
 IV controlled substances beyond the limits allowed by law in that the prescriptions totaled more  
 than a 120-day supply or more than 5 refills, as follows:

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
688625	zolpidem tartrate	30	6	180	180	30
690209	clonazepam	90	6	540	180	90
728887	zolpidem tartrate	30	6	180	180	30
732305	Clonazepam	30	6	180	180	30
735099	Clonazepam	30	6	180	180	30
737527	estrogens/methyl testosterone	30	6	180	180	30
745284	zolpidem tartrate	30	6	180	180	30

Rx No.	Drug	Qty	Total No. of fills	Sum Of Qty	Sum of Days Supply	Excess Qty Supplied
798206	Ambien CR	30	6	180	180	30
806829	phentermine hydrochloride	30	6	180	180	30
811086	Androgel	75	6	450	180	75
813685	Clonazepam	90	6	540	180	90
					<b>Total</b>	<b>495</b>

**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 52637, issued to Walgreens Corporation, doing business as Walgreens # 06036;
2. Revoking or suspending Pharmacist License Number RPH 56947, issued to Robert Paul Lesiw;
3. Ordering Walgreens Corporation, doing business as Walgreens # 06036, and Robert Paul Lesiw, 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
4. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

*9/27/16*

*Virginia Herold*

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

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