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8	BEFORE BOARD OF PE	IARMACY			
9	DEPARTMENT OF CO STATE OF CA				
10					
11	In the Matter of the Accusation Against:	Case No. 5806			
12	KAISER PERMANENTE, INC., DBA KAISER PERMANENTE PHARMACY #113				
13	3099 E. Pacific Coast Hwy. Long Beach, CA 90804	ACCUSATION			
14	Original Permit No. PHY 37029				
15	SHALEEN RENEE NISPEROS				
16	3057 Springdale Dr. #61 Long Beach, CA 90810				
17	Original Pharmacy Technician Registration				
18	No. TCH 99010				
19	Respondents.				
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21	Complainant alleges:				
22	PARTIES				
23	1. Virginia Herold ("Complainant") bring	s this Accusation solely in her official capacity			
24	as the Executive Officer of the Board of Pharmacy,	Department of Consumer Affairs ("Board").			
25	2. On or about April 5, 1991, the Board is	sued Original Permit Number PHY 37029 to			
26	Kaiser Permanente, Inc., doing business as Kaiser I	Permanente Pharmacy #113 ("Respondent			
27	Kaiser"). The Original Permit was in full force and	l effect at all times relevant to the charges			
28	brought herein and will expire on November 1, 201	7, unless renewed.			
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		Accusation Case No. 5806			

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1	3. On or about February 18, 2010, the Board issued Original Pharmacy Technician	
2	Registration Number TCH 99010 to Shaleen Renee Nisperos ("Respondent Nisperos"). The	
3	Original Pharmacy Technician Registration was in full force and effect at all times relevant to th	
4	charges brought herein expired on December 31, 2015, and has been cancelled.	
5	JURISDICTION	
6	4. This Accusation is brought before the Board under the authority of the following	
7	laws. All section references are to the Business and Professions Code unless otherwise indicated	
8	5. Section 4300 provides, in pertinent part, that every license issued by the Board is	
9	subject to discipline, including suspension or revocation.	
10	6. Section 4300.1 states:	
11	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by	
12	operation of law or by order or decision of the board or a court of law, the placement of a license	
13	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board	
14	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary	
15.	proceeding against, the licensee or to render a decision suspending or revoking the license."	
16	STATUTORY PROVISIONS	
17	7. Section 4022 states	
18	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in	
19	humans or animals, and includes the following:	
20	"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without	
21	prescription," "Rx only," or words of similar import.	
22	"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale	
23	by or on the order of a," "Rx only," or words of similar import, the blank to be filled	
24	in with the designation of the practitioner licensed to use or order use of the device.	
25	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on	
26	prescription or furnished pursuant to Section 4006."	
27	8. Section 4036.5 states: "Pharmacist-in-charge' means a pharmacist proposed by a	
28	pharmacy and approved by the board as the supervisor or manager responsible for ensuring the	
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	Accusation Case No. 5806	

pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

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Section 4060 states, in pertinent part:

"A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer."

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10. Section 4081 states, in pertinent part:

"(a) All records of manufacture and of sale, acquisition, receipt, shipment, 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, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, 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.

"(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacistin-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section."

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11. Section 4301 states:

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

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license."

"(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.

. . . .

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"(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."

12. Health and Safety Code section 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

13. Health and Safety Code section 11171 states: "No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."

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REGULATORY PROVISION

14. 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

15. Section 125.3 states, in pertinent part, that the 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.

CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

16. Acetaminophen with Codeine, brand name Tylenol with Codeine #4, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(2), and a dangerous drug pursuant to Business and Professions Code section 4022.

17. Carisoprodol, brand name Soma, is a Schedule IV controlled substance pursuant to Code of Federal Regulations, title 21, section 1308.14, subdivision (c)(6), and a dangerous drug pursuant to Business and Professions Code section 4022, as of January 11, 2012.

18. Norco, a combination product containing the controlled substance hydrocodone and non-narcotic acetaminophen, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drug pursuant to Business and Professions Code section 4022.

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19. Tramadol, brand name Ultram, is a Schedule IV controlled substances pursuant to the
 Federal Controlled Substances Act (21 U.S.C. § 812) and a dangerous drug pursuant to Business
 and Professions Code section 4022.

FACTUAL BACKGROUND

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20. On or about September 2, 2015, Respondent Kaiser's pharmacist-in-charge James Crowell ("PIC Crowell") faxed a letter to the Board reporting the theft, diversion and self-use of acetaminophen with codeine by Respondent Nisperos. The letter indicated that the investigation was ongoing and the total number of stolen tablets was not yet determined.

9 21. On or about September 16, 2015, PIC Crowell faxed another statement to the Board
10 that attached a document titled "Executive Summary" which identified a total loss of 12,732
11 tablets of acetaminophen with codeine 300/60mg from July 17, 2014, to August 24, 2015. The
12 "Executive Summary" identified a total loss of 5,945 tablets of tramadol 50mg from July 17,
13 2014, to August 24, 2015, as well as admissions from Respondent Nisperos that she diverted
14 acetaminophen with codeine and tramadol from Respondent Kaiser.

22. On or about October 15, 2015, a Board of Pharmacy Inspector drove to Respondent Kaiser and interviewed staff from the pharmacy, including PIC Crowell. PIC Crowell indicated that he received instructions from Kaiser Permanente to provide purchasing records for, as well as to take daily counts of, acetaminophen with codeine. After reviewing records and beginning daily counts, PIC Crowell discovered that tablets were missing. In response, pharmacy staff added a surveillance camera and adjusted the angle of an existing surveillance camera to be able to directly observe acetaminophen with codeine stored at the Respondent Kaiser. Surveillance recordings were reviewed nightly and showed Respondent Nisperos diverting and using acetaminophen with codeine while on duty at Respondent Kaiser.

23. On or about October 29, 2015, the Board inspector received an email from a Kaiser Permanente Pharmacy Investigations Specialist. Attached to the email were pharmacy acquisition and disposition records as well as a final audit reconciliation, which identified additional losses of controlled substances and dangerous drugs as follows: 7,006 tablets of Hydrocodone/APAP 5/325 from July 17, 2013, through July 16, 2014; 4,194 tablets of

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Hydrocodone/APAP 10/325 from July 17, 2013, through July 16, 2014; 1,569 tablets of

Carisoprodol 350mg from July 17, 2013, through May 27, 2015; and 6,969 tablets of Tramadol 50mg from July 17, 2013, through July 16, 2014.

24. The Board inspector identified the following total drug losses at Respondent Pharmacy:

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	Drug	Date Range	Variance
	Tramadol 50mg	7/17/13 through 8/24/15	- 12,914 tablets
	Acetaminophen/Codeine 300/60mg	7/17/14 through 8/24/15	- 12,732 tablets
	Hydrocodone/APAP 5/325	7/17/13 through 7/16/14	- 7,006 tablets
	Hydrocodone/APAP 10/325	7/17/13 through 7/16/14	- 4,194 tablets
	Carisoprodol 350mg	7/17/13 through 5/27/15	- 1,569 tablets

FIRST CAUSE FOR DISCIPLINE

(Theft of Controlled Substances and Dangerous Drugs)

25. Respondent Nisperos is subject to disciplinary action under section 4301, subdivision (f), for the theft of controlled substances and dangerous drugs from Respondent Kaiser. The circumstances of the violation include that Respondent Nisperos stole 12,732 tablets of acetaminophen with codeine 300-60mg and at least 5,945 tablets of tramadol 50mg from Respondent Kaiser between July 17, 2013, and August 24, 2015. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 20 through 24, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Drugs and Controlled Substances)

26. Respondent Nisperos is subject to disciplinary action under section 4301, subdivision (h), for the dangerous use of drugs and controlled substances. The circumstances of the violation include that Respondent Nisperos admitted, and her admissions are confirmed by surveillance footage, that she consumed acetaminophen with codeine and tramadol while she was working onduty as a pharmacy technician at Respondent Kaiser. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 20 through 25, inclusive, as though set forth fully.

1	THIRD CAUSE FOR DISCIPLINE		
2	(Unlawful Possession of a Controlled Substances)		
3	27. Respondent Nisperos is subject to disciplinary action under section 4060 for the		
4	unlawful possession of controlled substances. The circumstances of the violation include that		
5	Respondent Nisperos admittedly stole acetaminophen with codeine, a schedule III controlled		
6	substance, from Respondent Kaiser. The controlled substances tramadol 50mg and		
7_	acetaminophen with codeine 300-60mg stolen by Respondent Nisperos were not furnished		
8	pursuant to the prescription of a physician. Complainant refers to, and by this reference		
.9	incorporates, the allegations set forth in paragraphs 20 through 25, inclusive, as though set forth		
10	fully.		
11	FOURTH CAUSE FOR DISCIPLINE		
12	(Unlawful Furnishing of a Controlled Substances)		
13	28. Respondent Nisperos is subject to disciplinary action under Health and Safety Code		
14	sections 11170 and 11171, in conjunction with section 4301, subdivisions (j) and (o), in that		
15	Respondent Nisperos unlawfully furnished controlled substances to herself. The circumstances of		
16	the violation include that Respondent Nisperos furnished and administered stolen acetaminophen		
17	with codeine 300-60mg, a schedule III controlled substance, and tramadol 50mg, a schedule IV		
18	controlled substance, to herself. Complainant refers to, and by this reference incorporates, the		
19	allegations set forth in paragraphs 20 through 25, inclusive, as though set forth fully.		
20	FIFTH CAUSE FOR DISCIPLINE		
21	(Lack of Operational Standards and Security)		
22	29. Respondent Kaiser is subject to disciplinary action under California Code of		
23	Regulations, title 16, section 1714, subdivision (b), in conjunction with section 4301, subdivision		
24	and (0), in that Respondent Kaiser failed to maintain its facilities, space, fixtures, and equipment		
25	so that its dangerous drugs were maintained in a safe and secure manner. The circumstances of		
26	the violation include that drug audits were performed at Respondent Kaiser and identified the		
27	following drug losses between July 17, 2013, and August 24, 2015: 12,914 tablets of Tramadol		
28	50mg; 12,732 tablets of Acetaminophen/Codeine 300/60mg; 7,006 tablets of Hydrocodone/APAP		

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5/325; 4,194 tablets of Hydrocodone/APAP 10/325; and, 1,569 tablets of Carisoprodol 350mg. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 20 through 25, inclusive, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Keep an Accurate Inventory of Dangerous Drugs and Controlled Substances)

30. Respondent Kaiser is subject to disciplinary action under section 4081, subdivision (a), in conjunction with section 4301, subdivisions (j) and (o), in that Respondent Kaiser failed to maintain an accurate inventory of dangerous drugs and controlled substances. The circumstances of the violation include that Respondent Kaiser's inventory of dangerous drugs and controlled substances failed to account for thousands of missing tablets of Tramadol 50mg, Acetaminophen/Codeine 300/60mg, Hydrocodone/APAP 5/325, Hydrocodone/APAP 10/325, and Carisoprodol 350mg. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 20 through 25, inclusive, as well as paragraph 29, as though set forth fully.

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:

Revoking or suspending Original Permit Number PHY 37029 issued to Kaiser
 Permanente, Inc., doing business as Kaiser Permanente Pharmacy #113;

Revoking or suspending Original Pharmacy Technician Registration Number TCH
 99010 issued to Shaleen Renee Nisperos;

3. Ordering to Kaiser Permanente, Inc., doing business as Kaiser Permanente Pharmacy #113, and Shaleen Renee Nisperos 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,

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Taking such other and further action as deemed necessary and proper. 4. 3/13/17 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant LA2016601024 52368660.doc Accusation Case No. 5806