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

10 In the Matter of the Accusation Against:

Case No. 5806

11 **KAISER PERMANENTE, INC., DBA**  
12 **KAISER PERMANENTE PHARMACY #113**  
3099 E. Pacific Coast Hwy.  
13 Long Beach, CA 90804

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

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.

20  
21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold ("Complainant") brings 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 issued Original Permit Number PHY 37029 to  
26 Kaiser Permanente, Inc., doing business as Kaiser Permanente Pharmacy #113 ("Respondent  
27 Kaiser"). The Original Permit was in full force and effect at all times relevant to the charges  
28 brought herein and will expire on November 1, 2017, unless renewed.



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

3 9. Section 4060 states, in pertinent part:

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

14 10. Section 4081 states, in pertinent part:

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

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

1           11.   Section 4301 states:

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

5           ....

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

9           ....

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

15          ....

16          “(j) The violation of any of the statutes of this state, or any other state, or of the United  
17          States regulating controlled substances and dangerous drugs.

18          ....

19          “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
20          violation of or conspiring to violate any provision or term of this chapter or of the applicable  
21          federal and state laws and regulations governing pharmacy, including regulations established by  
22          the board or by any other state or federal regulatory agency.”

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

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

28          ///

1 **REGULATORY PROVISION**

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

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

7 .....  
8 “(d) Each pharmacist while on duty shall be responsible for the security of the prescription  
9 department, including provisions for effective control against theft or diversion of dangerous  
10 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy  
11 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

12 **COST RECOVERY**

13 15. Section 125.3 states, in pertinent part, that the Board may request the administrative  
14 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
15 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
16 case.

17 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

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

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

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

28 ///



1 Hydrocodone/APAP 10/325 from July 17, 2013, through July 16, 2014; 1,569 tablets of  
2 Carisoprodol 350mg from July 17, 2013, through May 27, 2015; and 6,969 tablets of Tramadol  
3 50mg from July 17, 2013, through July 16, 2014.

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

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Theft of Controlled Substances and Dangerous Drugs)**

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

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of Drugs and Controlled Substances)**

23 26. Respondent Nisperos is subject to disciplinary action under section 4301, subdivision  
24 (h), for the dangerous use of drugs and controlled substances. The circumstances of the violation  
25 include that Respondent Nisperos admitted, and her admissions are confirmed by surveillance  
26 footage, that she consumed acetaminophen with codeine and tramadol while she was working on-  
27 duty as a pharmacy technician at Respondent Kaiser. Complainant refers to, and by this reference  
28 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 (o), 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



1 5/325; 4,194 tablets of Hydrocodone/APAP 10/325; and, 1,569 tablets of Carisoprodol 350mg.  
2 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs  
3 20 through 25, inclusive, as though set forth fully.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

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

15 **PRAYER**

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

- 18 1. Revoking or suspending Original Permit Number PHY 37029 issued to Kaiser  
19 Permanente, Inc., doing business as Kaiser Permanente Pharmacy #113;
- 20 2. Revoking or suspending Original Pharmacy Technician Registration Number TCH  
21 99010 issued to Shaleen Renee Nisperos;
- 22 3. Ordering to Kaiser Permanente, Inc., doing business as Kaiser Permanente Pharmacy  
23 #113, and Shaleen Renee Nisperos to pay the Board of Pharmacy the reasonable costs of the  
24 investigation and enforcement of this case, pursuant to Business and Professions Code section  
25 125.3; and,

26 ///

27 ///

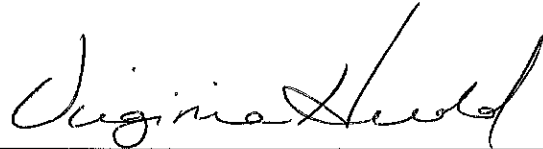
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4. Taking such other and further action as deemed necessary and proper.

DATED:

3/13/17



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

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