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

11 In the Matter of the Accusation Against:

Case No. 5890

12 **BACON EAST PHARMACY, INC.**
13 **d.b.a. BACON EAST PHARMACY**
14 **LISA HARB, PRESIDENT**
15 **2425 East Street, Suite 5**
16 **Concord, CA 95420**

A C C U S A T I O N

17 **Original Pharmacy Permit No. PHY 53596**

18 **and**

19 **SEAN BRIAN WEEKES**
20 **149 El Ritero**
21 **Sonoma, CA 95476**

22 **Pharmacist License No. RPH 70114**

23 Respondents.

24 Complainant alleges:

25 **PARTIES**

- 26 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
27 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 28 2. On or about April 16, 2015, the Board of Pharmacy issued Original Pharmacy Permit
Number PHY 53596 to Bacon East Pharmacy, Inc., doing business as Bacon East Pharmacy, with
Lisa Harb as President (Respondent Pharmacy). The permit was in full force and effect at all times

1 relevant to the charges brought in this Accusation and will expire on April 1, 2017, unless
2 renewed.

3 3. On or about October 18, 2013, the Board of Pharmacy issued Original Pharmacist
4 License Number RPH 70114 to Sean Brian Weekes (Respondent Pharmacist). The license was in
5 full force and effect at all times relevant to the charges brought in this Accusation and will expire
6 on July 31, 2017, unless renewed.

7 4. Respondent Pharmacist has been Pharmacist- in-Charge (PIC) of Respondent
8 Pharmacy since on or about April 16, 2015.

9 JURISDICTION

10 5. This Accusation is brought before the Board of Pharmacy (Board), Department of
11 Consumer Affairs, under the authority of the following laws. All section references are to the
12 Business and Professions Code unless otherwise indicated.

13 6. Section 4300 of the Code 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 board, whose default
16 has been entered or whose case has been heard by the board and found guilty, by any of the
17 following methods:

18 "(1) Suspending judgment.

19 "(2) Placing him or her upon probation.

20 "(3) Suspending his or her right to practice for a period not exceeding one 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
23 discretion may deem proper.

24 . . .

25 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
26 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
27 shall have all the powers granted therein. The action shall be final, except that the propriety of the
28 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil

1 Procedure."

2 7. Section 4300.1 of the Code states:

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

8 8. Section 4301 of the Code states, in pertinent part:

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

12 ...

13 "(j) The violation of any of the statutes of this state, or any other state, or of the United
14 States regulating controlled substances and dangerous drugs.

15 ...

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

20 STATUTORY AND REGULATORY PROVISIONS

21 9. Section 4169 of the Code states, in pertinent part:

22 "(a) A person or entity shall not do any of the following:

23 ...

24 (3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably
25 should have known were misbranded, as defined in Section 111335 of the Health and Safety
26 Code."

27 10. California Code of Regulations, title 16, section 1714, subdivision (c), states:

28 "The pharmacy and fixtures and equipment shall be maintained in a clean and orderly

1 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly
2 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for
3 pharmaceutical purposes.”

4 11. California Code of Regulations, title 16, section 1735.2, subdivision (g), states:

5 “All chemicals, bulk drug substances, drug products, and other components used for drug
6 compounding shall be stored and used according to compendial and other applicable requirements
7 to maintain their integrity, potency, quality, and labeled strength.”

8 COST RECOVERY

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

13 FACTUAL BACKGROUND

14 13. On or about January 15, 2016, the Department of Public Health notified the Board of
15 a physician’s complaint that a solution compounded at Respondent Pharmacy on or about
16 September 22, 2015, had bacterial contamination. The physician noticed many of her patients
17 developed bacterial infections after the phenylephrine 0.25 solution was sprayed into their nostrils,
18 so she cultured the solution and found it was contaminated with the bacteria *Serratia marcescens*.
19 As a result, on or about January 18, 2016, the Board conducted an inspection of Respondent
20 Pharmacy, and found the violations alleged in paragraphs 14-16, below.

21 FIRST CAUSE FOR DISCIPLINE 22 (Compounding Violations—Expired Ingredients) (Cal. Code Regs., tit. 16, §1735.2, subd. (g))

23 14. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
24 Pharmacist has subjected his pharmacist license to discipline, because Respondents committed
25 violations regarding compounding (Cal. Code Regs., tit. 16, §1735.2, subd. (g)). Respondents had
26 expired ethyl alcohol and two bottles of expired simple syrup on the compounding lab shelves.

1 SECOND CAUSE FOR DISCIPLINE
2 (Failure to Maintain Operational Standards)
3 (Cal. Code Regs., tit. 16, §1714, subd. (c))

4 15. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
5 Pharmacist has subjected his pharmacist license to discipline, because Respondents failed to
6 maintain operational standards requiring pharmacy equipment and fixtures to be maintained in a
7 clean and orderly condition (Cal. Code Regs., tit. 16, §1714, subd. (c)). Respondents allowed
8 considerable dust and dirt to accumulate on top of the compound hood and weight scale, and they
9 also failed to clean up a white powder directly below and around the compound work space.

10 THIRD CAUSE FOR DISCIPLINE
11 (Misbranding)
12 (Bus. & Prof. Code, § 4169, subd. (a)(3))

13 16. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
14 Pharmacist has subjected his pharmacist license to discipline, because Respondents misbranded
15 drugs by allowing incorrect information to appear on labels or packaging (Bus. & Prof. Code, §
16 4169, subd. (a)(3)). Respondents incorrectly documented the beyond-use date of phenylephrine
17 0.25 percent solution as 180 days from the compound date, when, the beyond-use date should
18 have been documented as 30 days from the compound date.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
21 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

22 1. Revoking or suspending Original Pharmacy Permit Number PHY 53596, issued to
23 Bacon East Pharmacy, Inc., doing business as Bacon East Pharmacy;

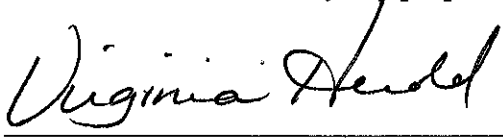
24 2. Revoking or suspending Pharmacist License Number RPH 70114, issued to Sean
25 Brian Weekes;

26 3. Ordering Bacon East Pharmacy and Sean Brian Weekes to pay the Board of Pharmacy
27 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3; and,

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

DATED: 1/11/17



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

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