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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. 6018

12 **PETER JIN CHANG**
705 Kristen Ct.
13 Santa Barbara, CA 93111

A C C U S A T I O N

14 **Pharmacist License No. RPH 65455**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 5, 2011, the Board of Pharmacy ("Board") issued Pharmacist
22 License No. RPH 65455 to Peter Jin Chang ("Respondent"). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on September
24 30, 2018, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Board") unless otherwise
4 indicated.

5 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
6 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
7 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
8 Safety Code)."

9 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
10 license issued may be suspended or revoked."

11 6. Section 4300.1 of the Code states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued license
13 by operation of law or by order or decision of the board or a court of law, the
14 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
investigation of, or action or disciplinary proceeding against, the licensee or to render a
decision suspending or revoking the license.

15 **STATUTORY PROVISIONS**

16 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
17 revoke a license on the ground that the licensee has been convicted of a crime substantially
18 related to the qualifications, functions, or duties of the business or profession for which the
19 license was issued.

20 8. Section 4021 of the Code states "'[c]ontrolled substance' means any substance listed
21 in Chapter 2 (commencing with Section 11053) of Division 10 of the health and Safety Code."

22 9. Section 4022 of the Code states, in pertinent part:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
24 self use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

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27 (c) Any other drug or device that by federal or state law can be lawfully
28 dispensed only on prescription or furnished pursuant to Section 4006.

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10. Section 4060 of the Code states, in pertinent part:

No person shall 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

11. 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 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.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to

1 fix the degree of discipline or, in the case of a conviction not involving controlled
2 substances or dangerous drugs, to determine if the conviction is of an offense
3 substantially related to the qualifications, functions, and duties of a licensee under this
4 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of this provision. The
6 board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

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8 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
9 abetting the violation of or conspiring to violate any provision or term of this chapter
10 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. . . .”

11 12. Section 4327 of the Code states “[a]ny person who, while on duty, sells, dispenses or
12 compounds any drug while under the influence of any dangerous drug or alcoholic beverages
13 shall be guilty of a misdemeanor.”

14 13. California Health and Safety Code section 11170 states, “[n]o person shall prescribe,
15 administer, or furnish a controlled substance for himself.”

16 14. California Health and Safety Code section 11171 states, “[n]o person shall prescribe,
17 administer, or furnish a controlled substance except under the conditions and in the manner
18 provided by this division.”

19 **REGULATORY PROVISION**

20 15. Title 21 of the United States Code, section 829, subdivision (b), states, in pertinent
21 part, “Schedule III and IV substances. Except when dispensed directly by a practitioner, other
22 than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a
23 prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§
24 301 et seq.], may be dispensed without a written or oral prescription in conformity with section
25 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than
26 six months after the date thereof or be refilled more than five times after the date of the
27 prescription unless renewed by the practitioner. . . .”

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16. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

17. 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 or violations 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 the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

18. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(7), and a dangerous drug pursuant to Code section 4022.

19. Diazepam, a benzodiazepam derivative, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(9), and a dangerous drug pursuant to Code section 4022.

20. Norco, a trade name for the combination drug of hydrocodone bitartrate (opioid analgesic) and acetaminophen, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drugs pursuant to Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crimes)**

3 21. Respondent is subject to disciplinary action under Code sections 490 and 4301,
4 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent was convicted of crimes substantially related to qualifications, functions, or duties of
6 a registered pharmacist which to a substantial degree evidence his present or potential unfitness to
7 perform the functions authorized by his registration in a manner consistent with the public health,
8 safety, or welfare, as follow:

9 a. On or about June 2, 2016, Respondent was convicted of one misdemeanor count of
10 violating Penal Code section 459 [second degree commercial burglary] and one misdemeanor
11 count of violating Code section 4060 [possession of a controlled substance], in the criminal
12 proceeding entitled *The People of the State of California v. Peter Jin Chang* (Super. Ct. Santa
13 Barbara County, 2016, No. 1494980). The court sentenced Respondent to 60 days in jail, placed
14 him on three years probation, ordered him to complete a Clean and Sober Program, and pay fines
15 and restitution.

16 b. The circumstances surrounding the conviction are that on or about March 22, 2016,
17 Santa Barbara County Sheriff's Department deputies reported to a disturbance call. Upon arrival,
18 Respondent's family members informed that they were worried about Respondent because he was
19 abusing alcohol. Respondent was in possession of five (5) bottles of unmarked prescription
20 bottles containing several hundred pills of diazepam 5mg and diazepam 10mg. The unmarked
21 prescription bottles only had blank Walgreens labels. Respondent's brother informed the
22 deputies that on or about March 19, 2016, Respondent was taken by an ambulance to the hospital
23 for a possible overdose of medication or combination of medication and alcohol. Respondent
24 admitted to taking the bottles containing several hundred pills of diazepam 5mg and diazepam
25 10mg from Walgreens, where he worked. Furthermore, Respondent admitted to diverting
26 approximately 300 tablets each of diazepam 5mg, diazepam 10 mg, clonazepam 1mg,
27 clonazepam 2 mg, and approximately 120 tablets of Norco for self use between January and
28 March of 2016 while employed at Walgreens. Respondent consumed four tablets per day while

1 working at Walgreens. Respondent also stated that he engaged in abnormal alcohol consumption
2 and dependence on prescription drugs.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crimes)**

5 22. Respondent is subject to disciplinary action under Code sections 490 and 4301,
6 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, in that
7 Respondent was convicted of crimes substantially related to qualifications, functions, or duties of
8 a registered pharmacist which to a substantial degree evidence his present or potential unfitness to
9 perform the functions authorized by his registration in a manner consistent with the public health,
10 safety, or welfare, as follow:

11 a. On or about June 2, 2016, Respondent was convicted of one misdemeanor count of
12 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol],
13 and one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
14 while having a blood alcohol concentration (“BAC”) of 0.08% or higher, by weight], in the
15 criminal proceeding entitled *The People of the State of California v. Peter Jin Chang* (Super. Ct.
16 Santa Barbara, 2016, No. 1494493). The court sentenced Respondent to 150 days in jail, placed
17 him on three years probation, ordered him to complete a 3-month Driving Under the Influence
18 Program, and pay fines.

19 b. The circumstances surrounding the conviction are that on or about March 22, 2016, a
20 California Highway Patrol officer responded to a traffic collision report. Upon arrival, the officer
21 observed Respondent’s vehicle collided into a palm tree. The officer observed that Respondent
22 had red and watery eyes, and thick and slurred speech. Respondent had a strong odor of alcohol
23 in Respondent’s breath. Respondent was unable to satisfactorily perform a series of field sobriety
24 tests as explained and demonstrated by the officer. Respondent’s breath test revealed 0.09% and
25 0.08% of BAC.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude,**
3 **Dishonesty, Fraud, Deceit, or Corruption)**

4 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
5 on the grounds of unprofessional conduct, in that between January and March of 2016,
6 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption
7 when he diverted approximately 300 tablets each of diazepam 5mg, diazepam 10 mg, clonazepam
8 1mg, clonazepam 2 mg, and approximately 120 tablets of Norco for self use while employed at
9 Walgreens. Complainant refers to and by this reference incorporates the allegations set forth
10 above in paragraph 21, subparagraph b, inclusive, as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dangerous Use of Dangerous Drugs and/or Alcohol)**

13 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
14 and (j), on the grounds of unprofessional conduct, in that Respondent administered to himself, of
15 any controlled substances, or used of any dangerous drugs or alcohol in a manner as to be
16 dangerous or injurious to himself, any person of the public, or to the extent that the use impaired
17 his ability to conduct with safety to the public the practice authorized by his license, as follows:

18 a. Between January and March of 2016, Respondent diverted approximately 300 tablets
19 each of diazepam 5mg, diazepam 10 mg, clonazepam 1mg, clonazepam 2 mg, and approximately
20 120 tablets of Norco for self use while employed at Walgreens, where he consumed four tablets
21 per day. Complainant refers to and by this reference incorporates the allegations set forth above
22 in paragraph 21, subparagraph b, inclusive, as though set forth fully.

23 b. On or about March 22, 2016, Respondent drove his vehicle while being under the
24 influence of alcohol and collided into a palm tree. Complainant refers to and by this reference
25 incorporates the allegations set forth above in paragraph 22, subparagraph b, inclusive, as though
26 set forth fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Multiple Convictions Involving Dangerous Drugs and Alcohol)**

3 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
4 on the grounds of unprofessional conduct, in that on or about June 2, 2016, Respondent was
5 convicted of four misdemeanor counts involving the use, consumption, or self-administration of
6 any dangerous drug or alcohol, or any combination of those substances. Complainant refers to
7 and by this reference incorporates the allegations set forth above in paragraphs 21 and 22,
8 inclusive, as though set forth fully.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Unlawful Possession of Dangerous Drug / Controlled Substance)**

11 26. Respondent is subject to disciplinary action under Code section 4060, in that between
12 January and March of 2016, Respondent diverted approximately 300 tablets each of diazepam
13 5mg, diazepam 10 mg, clonazepam 1mg, clonazepam 2 mg, and approximately 120 tablets of
14 Norco for self use. Complainant refers to and by this reference incorporates the allegations set
15 forth above in paragraph 21, subparagraph b, inclusive, as though set forth fully.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Violation of Statutes of This State and the United States**
18 **Regulating Controlled Substances and Dangerous Drugs)**

19 27. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
20 by and through section 4060 of the Code, sections 11170 and 11171 of the Health and Safety
21 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
22 violated the statutes of this state and the United States regulating controlled substances and
23 dangerous drugs. Complainant refers to and by this reference incorporates the allegations set
24 forth above in paragraph 21, subparagraph b, inclusive, as though set forth fully.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Violating or Attempting to Violate Any Provision or Term of
3 This Chapter or of the Applicable Federal and State Laws and Regulations Governing
4 Pharmacy)

5 28. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
6 by and through section 4060 of the Code, sections 11170 and 11171 of the Health and Safety
7 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
8 violated or attempted to violate the provisions of the terms of this chapter and the applicable
9 federal and state laws and regulations governing pharmacy. Complainant refers to and by this
10 reference incorporates the allegations set forth above in paragraph 21, subparagraph b, inclusive,
11 as though set forth fully.

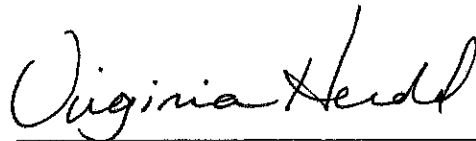
12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Pharmacist License No. RPH 65455, issued to Peter Jin
16 Chang;
- 17 2. Ordering Peter Jin Chang to pay the Board the reasonable costs of the investigation
18 and enforcement of this case, pursuant to Code section 125.3; and,
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21
22 DATED: _____

4/12/17



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

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