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7

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

In the Matter of the Accusation Against:

11 MART ROHT  
12 1075 Grover Ave. #5  
Glendale, CA 91201  
13 Pharmacist License No. RPH 25106

14 Respondent.

Case No. 3142

OAH No.

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

15  
16  
17 FINDINGS OF FACT

18 1. On or about October 14, 2008, Complainant Virginia Herold, in her  
19 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
20 Affairs, filed Accusation No. 3142 against Mart Roht (Respondent) before the Board of  
21 Pharmacy.

22 2. On or about December 31, 1969, the Board of Pharmacy (Board) issued  
23 Pharmacist License No. RPH 25106 to Respondent. The Pharmacist License expired on  
24 December 21, 2007, and has not been renewed.

25 3. On or about October 23, 2008, Maria L. Camacho, an employee of the  
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
27 3142, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
28 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is: 1075 Grover Ave. #5, Glendale, CA 91201. A copy of the Accusation is  
2 attached as exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about November 1, 2008, the aforementioned documents were  
6 returned by the U.S. Postal Service marked "No Forwarding Address."

7 6. Business and Professions Code section 118 states, in pertinent part:

8 (b) The suspension, expiration, or forfeiture by operation of law of a  
9 license issued by a board in the department, or its suspension, forfeiture, or  
10 cancellation by order of the board or by order of a court of law; or its surrender  
11 without the written consent of the board, shall not, during any period in which it  
12 may be renewed, restored, reissued, or reinstated, deprive the board of its  
13 authority to institute or continue a disciplinary proceeding against the licensee  
14 upon any ground provided by law or to enter an order suspending or revoking the  
15 license or otherwise taking disciplinary action against the license on any such  
16 ground.

13 7. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the  
15 respondent files a notice of defense, and the notice shall be deemed a specific  
16 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
17 of defense shall constitute a waiver of respondent's right to a hearing, but the  
18 agency in its discretion may nevertheless grant a hearing.

18 8. Respondent failed to file a Notice of Defense within 15 days after service  
19 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
20 Accusation No. 3142.

21 9. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at  
23 the hearing, the agency may take action based upon the respondent's express  
24 admissions or upon other evidence and affidavits may be used as evidence without  
25 any notice to respondent.

25 10. Pursuant to its authority under Government Code section 11520, the Board  
26 finds Respondent is in default. The Board will take action without further hearing and, based on  
27 the evidence on file herein, finds that the allegations in Accusation No. 3142 are true.

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1 11. The total cost for investigation and enforcement in connection with the  
2 Accusation are \$8,435.00 as of December 22, 2008.

3 DETERMINATION OF ISSUES

- 4 1. Based on the foregoing findings of fact, Respondent Mart Roht has  
5 subjected his Pharmacist License No. RPH 25106 to discipline.
- 6 2. A copy of the Accusation is attached.
- 7 3. The agency has jurisdiction to adjudicate this case by default.
- 8 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist  
9 License based upon the following violations alleged in the Accusation:

- 10 a. Business and Professions Code section 4081(a) (Failure to  
11 Account for Dangerous Drugs)
- 12 b. Business and Professions Code section 4105(a) (Failure to Provide  
13 Records)
- 14 c. Business and Professions Code section 4059.5 (Non-Pharmacists  
15 Signing for Dangerous Drugs)
- 16 d. Code of Regulations, title 16, section 1714 (Unauthorized Access  
17 to Pharmacy)

18 ORDER

19 IT IS SO ORDERED that Pharmacist License No. RPH 25106, heretofore issued  
20 to Respondent Mart Roht, is revoked.

21 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
22 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
23 within seven (7) days after service of the Decision on Respondent. The agency in its discretion  
24 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
25 statute.

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1 This decision shall become effective on April 10, 2009

2 It is so ORDERED on March 11, 2009

3 BOARD OF PHARMACY  
4 DEPARTMENT OF CONSUMER AFFAIRS  
5 STATE OF CALIFORNIA

6 By *Kenneth H. Schell*  
7 KENNETH H. SCHELL  
8 Board President

9 6037835.wpd  
10 DOJ docket number:LA2008600060

11 Attachment: Exhibit A: Accusation No.3142  
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Exhibit A  
Accusation No. 3142

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
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10 In the Matter of the Accusation Against:

Case No. 3142

11 MART ROHT  
12 1075 Grover Ave. #5  
Glendale, CA 91201  
13 Pharmacist License No. RPH 25106

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 PARTIES

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

20 2. On or January 31, 1969, the Board of Pharmacy issued Original  
21 Pharmacist License Number RPH 25106 to Mart Roht. (Respondent). The pharmacist license  
22 was in full force and effect at all time relevant to the charges brought herein and will expire on  
23 December 31, 2008 unless renewed.<sup>1</sup>

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board),

26  
27 1. At all times relevant to this Accusation, Respondent was the owner and pharmacist-in-  
28 charge of White Cross Pharmacy, permit no. 41289, which was voided on or around  
October 14, 2007 pursuant to Business and Professions Code section 4312.

1 Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 4300 of the Code provides, in pertinent part, that every license  
4 issued by the Board is subject to discipline, including suspension or revocation.

5 5. Section 4301 of the Code states:

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

10 .....

11 "(j) The violation of any of the statutes of this state or of the United States  
12 regulating controlled substances and dangerous drugs.

13 .....

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

18 6. Section 4059.5(a) states that except as otherwise provided in this chapter,  
19 dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and  
20 shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a  
21 licensee is permitted to operate through a designated representative, the designated representative  
22 may sign for and receive the delivery.

23 7. Section 4081 of the Code, subdivision states in pertinent part:

24 "(a) All records of manufacture and of sale, acquisition, or disposition of  
25 dangerous drugs or dangerous devices shall be at all times during business hours open to  
26 inspection by authorized officers of the law, and shall be preserved for at least three years from  
27 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,  
28 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,

1 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked  
2 certificate, license, permit, registration, or exemption under Division 2 (commencing with  
3 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)  
4 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or  
5 dangerous devices.”

6 “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary  
7 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee,  
8 for maintaining the records and inventory described in this section.

9 8. Section 4105, subdivision (a), of the Code states that all records or other  
10 documentation of the acquisition and disposition of dangerous drugs and dangerous devices by  
11 any entity licensed by the Board shall be retained on the licensed premises in a readily retrievable  
12 form.

13 9. Section 4113(b) provides in pertinent part that the pharmacist-in-charge  
14 shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations  
15 pertaining to the practice of pharmacy.

16 10. California Code of Regulations, title 16, section 1718 states:

17 “Current Inventory” as used in Sections 4081 and 4332 of the Business and  
18 Professions Code shall be considered to include complete accountability for all dangerous drugs  
19 handled by every licensee enumerated in Sections 4081 and 4332.

20 11. California Code of Regulations, title 16, section 1714(d) states that each  
21 pharmacist while on duty shall be responsible for the security of the prescription department,  
22 including provisions for effective control against theft or division of dangerous drugs and  
23 devices, and records for such drugs and devices. Possession of a key to the pharmacy where  
24 dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

25 12. Business and Professions Code section 118, subdivision (b) states:

26 “The suspension, expiration, or forfeiture by operation of law of a license issued  
27 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or  
28 by order of a court of law, or its surrender without the written consent of the board, shall not,



1 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board  
2 of its authority to institute or continue a disciplinary proceeding against the licensee upon any  
3 ground provided by law or to enter an order suspending or revoking the license or otherwise  
4 taking disciplinary action against the licensee on any such ground.

5 13. Business and Professions Code section 125.3, subdivision (a), states, in  
6 pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a  
7 disciplinary proceeding before any board within the department . . . the board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations  
9 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case."

11 FIRST CAUSE FOR DISCIPLINE

12 (Failure to Account for Dangerous Drugs and/or Controlled Substances)

13 14. Respondent is subject to disciplinary action pursuant to section 4300 and  
14 4301 (j) and (o) for violation of sections 4081(a) and 4105(a), in conjunction with California  
15 Code of Regulations, title 16, section 1718, in that for the period of January 1, 2004 through July  
16 28, 2006, Respondent failed to provide records of disposition of 3,981 pints of Phenergan with  
17 Codeine.

18 SECOND CAUSE FOR DISCIPLINE

19 (Failure to Provide Records)

20 15. Respondent is subject to disciplinary action pursuant to section 4300 and  
21 4301(j) and (o) for violation of sections 4081(a) and 4105(a), in conjunction with California  
22 Code of Regulations, title 16, section 1718 in that Respondent failed to ensure that a complete set  
23 of records concerning sales of Phenergan with Codeine by White Cross Pharmacy for the period  
24 of January 1, 2004 to present were available for inspection upon request by Board of Pharmacy  
25 inspectors.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Non-Pharmacists Signing for Dangerous Drugs)

3 16. Respondent is subject to disciplinary action pursuant to section 4300 and  
4 4301(j) and (o) for violation of section 4059.5 in that between January 1, 2004 and August 2,  
5 2007, approximately thirty dangerous drug deliveries were signed for and received by individuals  
6 who were not licensed pharmacists.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Unauthorized Access to Pharmacy)

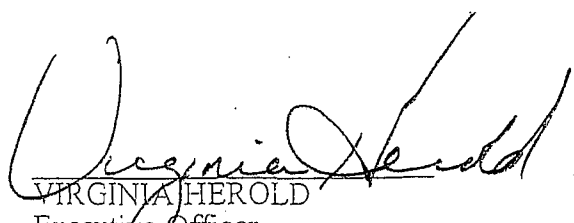
9 17. Respondent is subject to disciplinary action pursuant to section 4300 and  
10 4301(j) and (o) for violation of Code of Regulations, title 16, section 1714 in that he allowed  
11 access to White Cross pharmacy and its supply of dangerous drugs to unauthorized individuals.

12 PRAYER

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

- 15 1. Revoking or suspending Original Pharmacist License Number RPH
- 16 25106, issued to Mart Roht;
- 17 2. Ordering Mart Roht to pay the Board of Pharmacy the reasonable costs of
- 18 the investigation and enforcement of this case, pursuant to Business and Professions Code
- 19 section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: 10/14/08

23   
 24 VIRGINIA HEROLD  
 25 Executive Officer  
 26 Board of Pharmacy  
 27 Department of Consumer Affairs  
 28 State of California  
 Complainant