EDMUND G. BROWN JR., Attorney General
of the State of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2541
Facsimile: (213) 897-2804

Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MART ROHT 1075 Grover Ave. #5 Glendale, CA 91201 Pharmacist License No. RPH 25106 Respondent.	Case No. 3142 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Mart Roht has subjected his Pharmacist License No. RPH 25106 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4081(a) (Failure to Account for Dangerous Drugs)

b. Business and Professions Code section 4105(a) (Failure to Provide Records)

c. Business and Professions Code section 4059.5 (Non-Pharmacists Signing for Dangerous Drugs)

d. Code of Regulations, title 16, section 1714 (Unauthorized Access to Pharmacy)

ORDER

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

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

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This decision shall become effective on April 10, 2009.

It is so ORDERED on March 11, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

KENNETH H. SCHELL
Board President

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DOJ docket number:LA2008600060

Attachment: Exhibit A: Accusation No.3142

Exhibit A

Accusation No. 3142

EDMUND G. BROWN JR., Attorney General
of the State of California
KAREN B. CHAPPELLE
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MART ROHT 1075 Grover Ave. #5 Glendale, CA 91201 Pharmacist License No. RPH 25106 Respondent.	Case No. 3142 **ACCUSATION**

Complainant alleges:

PARTIES

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

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

JURISDICTION

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

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1. At all times relevant to this Accusation, Respondent was the owner and pharmacist-in-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.

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

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

5. Section 4301 of the Code states:

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

. . . .

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

. . . .

"(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.

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

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

"(a) All records of manufacture and of sale, acquisition, 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, pharmacy, veterinary food-animal drug retailer, 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 any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

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

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

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

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

11. California Code of Regulations, title 16, section 1714(d) states that each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or division 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.

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

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

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

13. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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."

FIRST CAUSE FOR DISCIPLINE

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

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

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Records)

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

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THIRD CAUSE FOR DISCIPLINE

(Non-Pharmacists Signing for Dangerous Drugs)

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

FOURTH CAUSE FOR DISCIPLINE

(Unauthorized Access to Pharmacy)

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

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:

1. Revoking or suspending Original Pharmacist License Number RPH 25106, issued to Mart Roht;

2. Ordering Mart Roht 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;

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

DATED: 10/14/08

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

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