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5 **BEFORE THE**
6 **BOARD OF PHARMACY**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 3602

10 **MICHELLE YEE**
11 **101 Crescent Way, #2111**
12 **San Francisco, CA 94134**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacist License No. RPH 53971

Respondent.

13 FINDINGS OF FACT

14 1. On or about September 23, 2010, Complainant Virginia Herold, in her official
15 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
16 filed Accusation No. 3602 against Michelle Yee (Respondent) before the Board of Pharmacy. A
17 true and correct copy of the Accusation is attached as exhibit A.

18 2. On or about August 27, 2002, the Board of Pharmacy (Board) issued Pharmacist
19 License No. RPH 53971 to Respondent. The Pharmacist License was in full force and effect at
20 all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

21 3. On or about October 1, 2010, Respondent was served by Certified and First Class
22 Mail with copies of: Accusation No. 3602; a Statement to Respondent, a Notice of Defense (2
23 copies); a Request for Discovery; and the Discovery Statutes (Gov. Code, §§ 11507.5-11507.7) at
24 Respondent's address of record, which was then: 3309 Noriega Street, San Francisco, CA 94122.
25 On or about October 12, 2010, Respondent changed her address of record with the Board. In an
26 abundance of caution, duplicate copies of the Accusation and the above-described accompanying
27 documents were served on or about December 15, 2010 by Certified and First Class Mail to
28 Respondent's new address of record: 101 Crescent Way, #2111, San Francisco, CA 94134.

1 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
2 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
3 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

4 5. Service of the Accusation was effective as a matter of law under Government Code
5 section 11505, subdivision (c) and/or Business and Professions Code section 124.

6 6. Moreover, on or about October 9, 2010, the Domestic Return Receipt (green card)
7 from the Certified Mail mailing of the Accusation materials to the 3309 Noriega Street address
8 was returned by the U.S. Postal Service, with a signature that appears to be that of Respondent,
9 showing the apparent receipt at Respondent's (prior) address of record on that date. Similarly, on
10 or about December 30, 2010, the Domestic Return Receipt (green card) from the Certified Mail
11 mailing of the Accusation materials to the 101 Crescent Way, #2111 address was returned by the
12 U.S. Postal Service, with a signature that appears to be that of Respondent, showing the apparent
13 receipt at Respondent's (current) address of record on that date

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

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 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

17 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3602.

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

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence

22 10. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 3602, finds that
27 the charges and allegations in Accusation No. 3602, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

1 11. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement are \$6,789.00 as of February 16, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Michelle Yee has subjected her
6 Pharmacist License No. RPH 53971 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
9 based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

11 a. In violation of Business and Professions Code section 4301(f), Respondent did acts
12 involving moral turpitude, dishonesty, fraud, deceit, or corruption, including: on more than one
13 occasion between at least July and October 2009, Respondent used the access afforded by her
14 employment as a pharmacist at Kaiser Foundation Hospital pharmacies to divert/steal, or attempt
15 to divert/steal, dangerous drugs including **Soma** and/or generic **carisoprodol**, at least 400 tablets;
16 and in or about November 2007 Respondent attempted to procure duplicate prescriptions for,
17 and/or attempted to receive unauthorized refills of, **Soma/carisoprodol**, at least 120 tablets.

18 b. In violation of Business and Professions Code section 4301(g), on one or more
19 occasions Respondent, as described above, created and/or signed documents that falsely
20 represented the existence or nonexistence of a state of facts.

21 c. In violation of Business and Professions Code section 4301(h), on one or more
22 occasions Respondent, as described above and as she admitted doing in abusive fashion between
23 2000 and 2003 and again between 2005 and 2009, self-administered and/or used one or more
24 dangerous drugs to the extent or in a manner dangerous or injurious to herself or another, or to the
25 extent that the use impaired her ability to conduct her pharmacy practice safely.

26 d. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4059,
27 Respondent, as described above, furnished to herself or another without valid prescription, and/or
28 conspired to furnish, and/or assisted or abetted furnishing of, dangerous drug(s).

1 e. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4063,
2 Respondent, as described above, refilled, conspired to refill, and/or assisted or abetted refilling of,
3 an unauthorized refill of a prescription.

4 f. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4324,
5 Respondent, as described above, falsely made, altered, forged, uttered, published, passed, or
6 attempted to pass, a prescription, and/or conspired and/or assisted in or abetted any of these acts.

7 g. In violation of Business and Professions Code section 4301, Respondent, as described
8 above, engaged in unprofessional conduct.

9

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ORDER

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IT IS SO ORDERED that Pharmacist License No. RPH 53971, heretofore issued to
Respondent Michelle Yee, is revoked.

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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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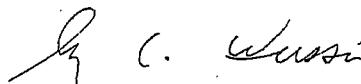
This Decision shall become effective on May 11, 2011.

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It is so ORDERED April 11, 2011.

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STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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20408565.DOC
DOJ Matter ID:SF2010200485

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Attachment:
Exhibit A: Accusation

27

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Exhibit A

Accusation

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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
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6 Facsimile: (415) 703-5480
Attorneys for Complainant

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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. 3602

11 **MICHELLE YEE**
12 **3309 Noriega Street**
13 **San Francisco, CA 94122**

A C C U S A T I O N

14 **Pharmacist License No. RPH 53971**

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 August 27, 2002, the Board of Pharmacy issued Pharmacist License No.
22 RPH 53971 to Michelle Yee (Respondent). The License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

24
25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 (o) Violating or attempting to violate, directly or indirectly; or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

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

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

12 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
13 drug or dangerous device except upon the prescription of an authorized prescriber.

14 10. Section 4063 of the Code provides, in pertinent part, that no prescription for a
15 dangerous drug may be refilled except upon authorization of the prescriber.

16 11. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
17 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
18 to have in his or her possession a drug secured by a forged prescription.

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation of the licensing
21 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

22 DANGEROUS DRUGS

23 13. Section 4022 of the Code states, in pertinent part:

24 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
25 except veterinary drugs that are labeled as such, and includes the following:

26 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
27 prescription,’ ‘Rx only,’ or words of similar import.
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2 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
3 prescription or furnished pursuant to Section 4006.”

4 14. **Soma** is a brand name for **carisoprodol**, a dangerous drug as designated by Business
5 and Professions Code section 4022. It is a muscle relaxant.

6
7 FACTUAL BACKGROUND

8 15. Between in or about 2003 and in or about 2009, Respondent was employed by one or
9 more Kaiser Foundation Hospital pharmacies in or around the San Francisco Bay Area, first as a
10 staff pharmacist until approximately October 2006, and then on a per diem basis.

11 16. During the tenure of her employment, Respondent used the access afforded by her
12 employment and licensure to divert/steal, or attempt to divert/steal, dangerous drugs, including
13 **Soma** and/or generic **carisoprodol**. The exact number of instances of diversion or attempted
14 diversion by Respondent, and the full quantity of drugs diverted or attempted to be diverted, are
15 not known, but in the course of the investigation(s) conducted by Kaiser and Board of Pharmacy
16 Inspector(s), the following were among the observations, admissions, and revelations reported:

17 a. In or about October 2009, Respondent was employed on a per diem basis in the
18 inpatient pharmacy at a Kaiser Foundation Hospital Inpatient/Outpatient Pharmacy (HSP 32670)
19 in South San Francisco, CA. On or about October 8, 2009, a date she was not scheduled to work
20 at Kaiser, Respondent entered the Kaiser outpatient pharmacy and, with slurred speech and other
21 signs of potential impairment by/influence of drugs or alcohol, attempted to divert/steal a bottle of
22 100 tablets of **Soma** or generic **carisoprodol** by asserting that she had been sent there by staff of
23 the inpatient pharmacy to transfer a bottle of **Soma/carisoprodol** to the inpatient pharmacy. This
24 was not true. Respondent subsequently admitted to being “very impaired” on this date.

25 b. Subsequent investigation showed that on dates in or around July and August
26 2009 that Respondent was working, three other bottles (100 tablets each) of **Soma/carisoprodol**
27 were taken from the outpatient pharmacy for “transfer” to the inpatient pharmacy, with no record
28 of receipt in the inpatient pharmacy, and no record of being dispensed in the inpatient pharmacy.

1 c. Respondent admitted to having a problem and being "out of control" with her
2 use and abuse of **Soma/carisoprodol**. Respondent admitted to developing an abusive pattern of
3 use of **Soma/carisoprodol** in and/or between 2000 and 2003, followed by a resumption of abuse
4 in or around 2005 that lasted through the above-described incident(s) in 2009.

5 d. On or about November 14, 2007, a physician gave Respondent a prescription
6 for **Soma/carisoprodol** (120 tablets). On or about November 27, 2007, Respondent returned to
7 that physician for a new prescription, claiming the previous one had been lost. She received a
8 new prescription for **Soma/carisoprodol** (120 tablets). No refills were authorized, but an attempt
9 was made to alter the prescription document to authorize six (6) refills. The pharmacy contacted
10 the prescriber and confirmed that no refills had been authorized. The prescriber told Respondent
11 he would no longer write any prescriptions for her, and placed an alert in her medical chart(s).

12
13 FIRST CAUSE FOR DISCIPLINE

14 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

15 17. Respondent is subject to discipline under section 4301(f) of the Code, in that
16 Respondent, as described in paragraphs 15 and 16 above, committed acts involving moral
17 turpitude, dishonesty, fraud, deceit, or corruption.

18 SECOND CAUSE FOR DISCIPLINE

19 (Creation/Signature of False Documents)

20 18. Respondent is subject to discipline under section 4301(g) of the Code in that
21 Respondent, as described in paragraphs 15 and 16 above, created and/or signed documents that
22 falsely represented the existence or nonexistence of a state of facts.

23 THIRD CAUSE FOR DISCIPLINE

24 (Dangerous or Injurious Self-Administration/Use of Dangerous Drug)

25 19. Respondent is subject to discipline under section 4301(h) of the Code, in that
26 Respondent, as described in paragraphs 15 and 16 above, self-administered and/or used one or
27 more dangerous drugs to the extent or in a manner dangerous or injurious to herself or another, or
28 to the extent that the use impaired her ability to conduct her pharmacy practice safely.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Dangerous Drug(s))

3 20. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, in that Respondent, as described in paragraphs 15 and 16 above, furnished to
5 herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
6 abetted furnishing of, one or more dangerous drug(s).

7 FIFTH CAUSE FOR DISCIPLINE

8 (Unlawful Refills of Prescriptions)

9 21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4063 of the Code, in that Respondent, as described in paragraphs 15 and 16 above, refilled,
11 conspired to refill, and/or assisted or abetted refilling of, an unauthorized refill of a prescription.

12 SIXTH CAUSE FOR DISCIPLINE

13 (Making, Uttering and/or Using False or Forged Prescriptions)

14 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
15 4324 of the Code, in that Respondent, as described in paragraphs 15 and 16 above, falsely made,
16 altered, forged, uttered, published, passed, or attempted to pass, a prescription for a drug, and/or
17 conspired and/or assisted in or abetted any of these acts.

18 SEVENTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 23. Respondent is subject to discipline under section 4301 of the Code in that
21 Respondent, as described in paragraphs 15 to 21 above, engaged in unprofessional conduct.

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24 PRAYER

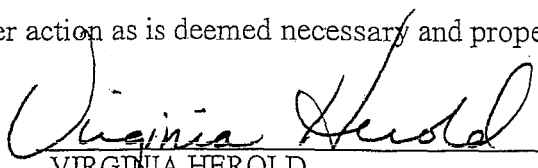
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Pharmacist License Number RPH 53971, issued to Michelle
28 Yee (Respondent);

1 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
2 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

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5 DATED: 9/23/10



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

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