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

In the Matter of the Accusation Against:

Case No. 3884

DEFAULT DECISION AND ORDER

CLAYTON EUGENE WHEELER
326 Lorraine Court
Sebastopol, CA 95472

[Gov. Code, §11520]

Pharmacist License No. RPH 28905

Respondent.

FINDINGS OF FACT

1. On or about April 5, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3884 against Clayton Eugene Wheeler (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)

2. On or about July 17, 1990, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 28905 to Respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 3884 and will expire on March 31, 2012, unless renewed.

3. On or about April 11, 2011, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 3879; a Statement to Respondent, a Notice of Defense (2 copies); a Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: 326 Lorraine Court, Sebastopol, CA 95472.

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

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

5 a. In violation of Business and Professions Code section 4301(f), Respondent did the
6 following acts involving moral turpitude, dishonesty, fraud, deceit, or corruption: In or between
7 May 2009 and March 2010, Respondent stole/diverted an unknown total quantity of **Guaifenesin**
8 **with Codeine**, a controlled substance, from his employer (a Kaiser pharmacy). At least some of
9 the amount stolen/diverted was for Respondent's self-use. The total quantity stolen/diverted is
10 not known, but Kaiser reported 30,844 mls lost due to employee pilferage.

11 b. In violation of Business and Professions Code section(s) 4301(h), (j), and/or (o),
12 and/or Health and Safety Code section 11170, Respondent, as described above, administered a
13 controlled substance to himself;

14 c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059.,
15 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
16 himself or another without a valid prescription, and/or conspired, assisted or abetted furnishing
17 of, a controlled substance, without a valid prescription;

18 d. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,
19 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,
20 conspired to possess and/or assisted in or abetted possession of, a controlled substance, without a
21 valid prescription;

22 e. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
23 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired t
24 obtain and/or assisted in or abetted obtaining of, a controlled substance by fraud, deceit,
25 subterfuge, or concealment of a material fact;

26 f. In violation of Business and Professions Code section 4301, Respondent, as described
27 above, engaged in unprofessional conduct.

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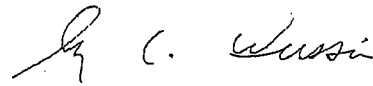
ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 28905, heretofore issued to Respondent Clayton Eugene Wheeler, 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.

This Decision shall become effective on January 11, 2012.

It is so ORDERED December 12, 2011.



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

20522746.DOC
DOJ Matter ID:SF2010202897

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3884

11 **CLAYTON EUGENE WHEELER**
12 **326 Lorraine Court**
13 **Sebastopol, CA 95472**

ACCUSATION

14 **Pharmacist License No. RPH 28905**

15 Respondent.

16 Complainant alleges:

17
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 July 17, 1990, the Board of Pharmacy issued Pharmacist License No.
22 RPH 28905 to Clayton Eugene Wheeler (Respondent). The License was in full force and effect at
23 all times relevant to the charges herein and will expire on March 31, 2012, unless renewed.

24 JURISDICTION

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

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1 ...
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 15. **Cheratussin AC** and **Robitussin AC** are among the brand names for a compound of
5 the expectorant guaifenesin and **codeine**, a Schedule V controlled substance as designated by
6 Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and
7 Professions Code section 4022. These are also known generically as **Guaifenesin with Codeine**.
8 These combinations are an expectorant cough syrup, and a narcotic analgesic.

9 16. **Percocet** and **Endocet** are among the brand names for a compound of acetaminophen
10 (APAP) and **oxycodone**, a Schedule II controlled substance as designated by Health and Safety
11 Code section 11055(b)(1)(N) and a dangerous drug as designated by Business and Professions
12 Code section 4022. These are also known as **Oxycodone with APAP**. These are narcotic drugs.

13 FACTUAL BACKGROUND

14 17. From an unknown start date until on or about March 30, 2010, Respondent worked as
15 a pharmacist for a Kaiser Pharmacy (PHY 46492) located in Santa Rosa, CA. For at least part of
16 that time, and until on or about March 30, 2010, Respondent served as pharmacist in charge. As
17 such, Respondent had access to the stock of controlled substances and dangerous drugs.

18 18. During the tenure of his employment, Respondent used his access to divert/steal
19 controlled substances and dangerous drugs, including **Guaifenesin with Codeine**.

20 19. The exact number of instances of diversion/theft by Respondent, and the full quantity
21 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
22 the course of investigations by Kaiser and by the Board, the following were reported:

23 a. An audit/investigation of controlled substance/dangerous drug inventory and
24 stock on hand by Kaiser auditors/investigators determined that between in or around May 2009
25 and March 2010 the Kaiser Pharmacy by which Respondent was employed showed a shortage of
26 **Guaifenesin with Codeine** cough syrup product(s) of approximately 30,863 mls.

27 b. Covert video footage showed Respondent engaged in suspicious activity with
28 regard to the supplies of **Guaifenesin with Codeine** in the pharmacy, including after hours.

1 c. On unknown dates in or around February or March 2010, an empty bottle of
2 **Guaifenesin with Codeine** from pharmacy stock was found in a waste basket in the pharmacy,
3 and an unlabeled bottle from pharmacy stock containing 97 tablets of **Oxycodone with APAP**
4 was found in an unlocked desk drawer in a desk used by Respondent.

5 d. Respondent told Kaiser auditor/investigators and Board Inspector(s) that he was
6 not involved in drug diversion/theft or self-use, that the video footage of his activities with regard
7 to **Guaifenesin with Codeine** was because of his own after-hours investigation of possible theft
8 or diversion by other employee(s), and that he put the **Oxycodone with APAP** in his desk drawer
9 after he found it elsewhere in the pharmacy premises and/or it was returned by a customer.

10 e. On or about April 12, 2010, Kaiser filed a Report of Theft or Loss of Controlled
11 Substances (DEA Form 106) with the Drug Enforcement Administration, in which Kaiser
12 reported losses due to employee pilferage of 129 bottles (236 mls per bottle, total of 30,844 mls)
13 of **Cheratussin AC (Guaifenesin with Codeine)** and 97 tablets of **Oxycodone with APAP**.

14 g. Respondent subsequently admitted to Board Inspector(s) that he had a problem
15 with **Robitussin AC (Guaifenesin with Codeine)**, and that he had diverted same from Kaiser
16 drug stock (for self-use). Respondent reported seeking treatment/counseling for his problem.
17

18 FIRST CAUSE FOR DISCIPLINE

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

20 20. Respondent is subject to discipline under section 4301(f) of the Code in that
21 Respondent, as described in paragraphs 17 to 19 above, committed numerous acts involving
22 moral turpitude, dishonesty, fraud, deceit, or corruption.
23

24 SECOND CAUSE FOR DISCIPLINE

25 (Self-Administration of Controlled Substance and/or Alcohol)

26 21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
27 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
28 described in paragraphs 17 to 19 above, administered a controlled substance to himself.

1 THIRD CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
5 in paragraphs 17 to 19 above, furnished to himself or another without a valid prescription, and/or
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Possession of Controlled Substance)

10 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
11 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
12 in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted
13 possession of, a controlled substance, without a prescription.

14
15 FIFTH CAUSE FOR DISCIPLINE

16 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

17 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
18 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
19 17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
20 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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22 SIXTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 25. Respondent is subject to discipline under section 4301 of the Code in that
25 Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.

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