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

In the Matter of the Accusation Against:

**KIMBALL LESLIE NILSSON
13132 Yorba St.
North Tustin, CA 92705**

**Registered Pharmacist License No. RPH
37110**

Respondent.

Case No. 6966

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 6, 2020, Complainant Anne Sodergren, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 6966 against Kimball Leslie Nilsson (Respondent) before the Board of Pharmacy.

(Accusation attached as Exhibit A.)

2. On or about August 19, 1982, the Board of Pharmacy (Board) issued Registered Pharmacist License No. RPH 37110 to Respondent. The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 6966 and it expired on June 30, 2020. This lapse in licensure, however, pursuant to Business and Professions

1 Code section 118(b) and/or Business and Professions Code section 4300.1 does not deprive the
2 Board of its authority to institute or continue this disciplinary proceeding.

3 3. On or about July 10, 2020, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 6966, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is: 13132 Yorba St., North Tustin, CA 92705.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
11 124.

12 5. Government Code section 11506, subdivision (c) states, in pertinent part:

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

18 6. The Board takes official notice of its records and the fact that Respondent failed to
19 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
20 waived his right to a hearing on the merits of Accusation No. 6966.

21 7. California Government Code section 11520, subdivision (a) 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

26 8. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 6966,

1 finds that the charges and allegations in Accusation No. 6966, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 9. The Board finds that the actual costs for Investigation and Enforcement are \$9,752.50
4 as of July 10, 2020.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Kimball Leslie Nilsson has
7 subjected his Registered Pharmacist License No. RPH 37110 to discipline.

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

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

12 a. Respondent is subject to disciplinary action under Business and Professions Code
13 section 4301, subdivision (f), for his dishonest, fraudulent, deceitful and/or corrupt acts.

14 b. Respondent is subject to disciplinary action under Business and Professions Code
15 section 4301, subdivision (j), for illegally possessing a controlled substance in violation of Health
16 and Safety Code section 11350, subdivision (a).

17 c. Respondent is subject to disciplinary action under Business and Professions Code
18 section 4301, subdivision (g), for knowingly making or signing certificates or documents that
19 falsely represent the existence or nonexistence of a state of facts.

20 d. Respondent is subject to disciplinary action under Business and Professions Code
21 section 4301 for unprofessional conduct in that he engaged in the activities described in the
22 Accusation.

23 **ORDER**

24 IT IS SO ORDERED that Registered Pharmacist License No. RPH 37110, issued to
25 Respondent Kimball Leslie Nilsson, is revoked. Pursuant to Business and Professions Code
26 section 4307, Kimball Leslie Nilsson shall be prohibited from serving as a manager,
27 administrator, owner, member, officer, director, associate, or partner of a licensee until
28 Pharmacist License Number RPH 37110 is reinstated.

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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.

This Decision shall become effective on October 15, 2020 at 5:00 p.m.

It is so ORDERED September 15, 2020

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

By 

Greg Lippe
Board President

82468819.DOCX
DOJ Matter ID:SD2020301241

Attachment:
Exhibit A: Accusation

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9429
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6966

14 **KIMBALL LESLIE NILSSON**
15 **13132 Yorba St.**
North Tustin, CA 92705

ACCUSATION

16 **Registered Pharmacist License No.**
17 **RPH 37110**

Respondent.

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21 **PARTIES**

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

24 2. On or about August 19, 1982, the Board of Pharmacy issued Registered Pharmacist
25 License Number RPH 37110 to Kimball Leslie Nilsson (Respondent). The Registered Pharmacist
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on June 30, 2020, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300, subdivision (a) of the Code provides that every license issued by the
9 Board may be suspended or revoked.

10 6. Section 4300.1 of the Code states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued license
12 by operation of law or by order or decision of the board or a court of law, the
13 placement of a license on a retired status, or the voluntary surrender of a license by a
14 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 4022 of the Code states

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

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

20 (b) Any device that bears the statement: "Caution: federal law restricts this
21 device to sale by or on the order of a _____" "Rx only," or words of similar import, the
22 blank to be filled in with the designation of the practitioner licensed to use or order
use of the device.

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

24 8. Section 4301 of the Code states in pertinent part:

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

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1 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
2 deceit, or corruption, whether the act is committed in the course of relations as to a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

3
4 (g) Knowingly making or signing any certificate or other document that falsely
represents the existence or nonexistence of a state of facts.

5 ...

6
7 (j) The violation of any of the statutes of this state, of any other state, or of the
United States regulating controlled substances and dangerous drugs.

8 ...

9
10 9. Section 4307, subdivision (a) of the Code states:

11 Any person who has been denied a license or whose license has been revoked
12 or is under suspension, or who has failed to renew his or her license while it was
13 under suspension, or who has been a manager, administrator, owner member, officer,
14 director, associate, or partner of any partnership, corporation, firm, or association
15 whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manger, administrator, owner,
16 member, officer, director, associate, or partner had knowledge or knowingly
17 participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manger, administrator,
18 owner, member, officer, director, associate, or partner of a licensee as follows:

19 (1) Where a probationary license is issued or where an existing license is placed
20 on probation, this prohibition shall remain in effect for a period not to exceed five
21 years.

22 (2) Where the license is denied or revoked, the prohibition shall continue until
23 the license is issued or reinstated.

24 10. Section 11350, subdivision (a) of the Health and Safety Code states:

25 Except as otherwise provided in the division, every person who possesses (1)
26 any controlled substance specified in subdivision (b), (c), (e) or paragraph (1) of
27 subdivision (f) of Section 11054, specified in paragraph (1), (15), or (2) of
28 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment in a county jail for not more
than one year, except that such person shall instead be punished pursuant to
subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior
convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph
(2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring
registration pursuant to subdivision (c) of Section 290 of the Penal Code.

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUG**

7 12. Dilaudid is the brand name for hydromorphone, a Schedule II controlled substance
8 pursuant to Health and Safety Code section 11054, subdivision (b)(1)(J) and a dangerous drug
9 pursuant to Business and Professions Code section 4022.

10 **FACTUAL ALLEGATIONS**

11 13. St. Joseph Hospital Pharmacy is a hospital pharmacy dispensing drugs to in-patients
12 at St. Joseph Hospital, located in Orange, California. At all relevant times herein, Respondent
13 was a staff pharmacist at St. Joseph Hospital Pharmacy.

14 14. On or about the night of December 23 and the early morning of December 24, 2018,
15 Respondent was on duty as a staff pharmacist at St. Joseph Hospital Pharmacy. He stored his
16 personal bag in the pharmacy's "buyer" area (not the "ante-room" of the pharmacy), in
17 contravention of the pharmacy's policies. Throughout his shift, Respondent accessed his personal
18 bag often, including after the compounding of the second bag of hydromorphone IV bag 20
19 mg/100 mL NS described below.

20 15. On December 23, 2018, St. Joseph Hospital had or received a prescription for a
21 hydromorphone IV bag 20 mg/100 mL NS for patient R.P.'s comfort care.

22 16. At approximately 9:06 p.m. on December 23, 2018, Respondent accessed the CII Safe
23 for a hydromorphone 50 mg/5 mL injection to compound a hydromorphone IV bag 20 mg in 100
24 mL NS for patient R.P. and asked the pharmacy technician, A.M. to compound the IV bag. The
25 pharmacy technician compounded the hydromorphone IV bag as directed and Respondent
26 verified the compounding. Respondent kept this hydromorphone IV bag at his desk.

27 17. At approximately 3:26 a.m. on December 24, 2018, Respondent again accessed the
28 CII Safe for a hydromorphone 50 mg/5 mL injection to compound a hydromorphone IV bag 20

1 mg in 100 mL NS for the same patient, R.P. and asked pharmacy technician, C.M. to compound
2 the IV bag. C.M. was hesitant to compound another IV bag because the first IV bag had not been
3 dispensed to patient R.P. After Respondent told C.M. multiple times to compound another
4 hydromorphone IV bag, C.M. compounded the hydromorphone IV bag as directed and
5 Respondent verified the compounding. Respondent kept this hydromorphone IV bag at his desk.

6 18. At approximately 4:15 a.m. on December 24, 2018, Respondent placed the second
7 hydromorphone IV bag in the CII refrigerator. Respondent received notification that patient R.P.
8 died before the dispensing of either hydromorphone bag compounded by him and the pharmacy
9 technicians. Respondent accessed the CII safe refrigerator and initiated the procedure for wasting
10 the hydromorphone from the first hydromorphone IV bag with another staff pharmacist, J.T. as a
11 witness to the wasting. Respondent recorded the wasting. J.T. cut the IV bag containing
12 hydromorphone and disposed of the contents in the controlled substance bin. J.T. executed a
13 disposition form indicating that he had witnessed such a wasting at approximately 6:00 a.m.

14 19. Approximately seven minutes later, Respondent accessed the CII safe refrigerator by
15 himself and removed the other hydromorphone IV bag from the refrigerator, placed it on the
16 counter and pulled the disposition forms for the other hydromorphone IV bag previously wasted
17 by him and J.T. Respondent referred to those disposition forms and filled out forms for the
18 second hydromorphone IV bag. He forged the signature of J.T. on a form to show that J.T. had
19 witnessed the wasting of hydromorphone from this IV bag. In fact, J.T. did not witness the
20 wasting of the hydromorphone. He then picked up this hydromorphone IV bag and passed by a
21 CS waste bin without cutting or placing anything in the CS waste bin. Respondent diverted the
22 hydromorphone.

23 20. After Respondent left his shift, other pharmacy staff immediately searched for the
24 second hydromorphone IV bag and could not locate it in the CII safe, the waste receptacles or
25 anywhere else in the pharmacy. During the interview conducted during St. Joseph Hospital's
26 internal investigation, Respondent falsely claimed that he had disposed of the second
27 hydromorphone IV bag in the CII waste receptacles and destroyed the IV bag and J.T. had signed
28 the disposition form and witnessed the wasting of the hydromorphone in the second IV bag.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest, Fraudulent, Deceitful and Corrupt Acts)**

3 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 for his dishonest, fraudulent, deceitful and/or corrupt acts, as set forth in paragraphs 13 through
5 20 above, which are incorporated herein by reference.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Illegal Possession of Controlled Substance)**

8 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
9 for illegally possessing a controlled substance in violation of Health and Safety Code section
10 11350, subdivision (a), as set forth in paragraphs 13 through 20 above, which are incorporated
11 herein by reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Knowingly Making or Signing False Documents)**

14 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
15 for knowingly making or signing certificates or documents that falsely represent the existence or
16 nonexistence of a state of facts, as set forth in paragraphs 13 through 20 above, which are
17 incorporated herein by reference.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 24. Respondent is subject to disciplinary action under Code section 4301 for
21 unprofessional conduct in that he engaged in the activities described in paragraphs 13 through 20
22 above, which are incorporated herein by reference.

23 **OTHER MATTERS**

24 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
25 RPH 37110 issued to Kimball Leslie Nilsson, Kimball Leslie Nilsson shall be prohibited from
26 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
27 licensee for five years if Pharmacist License Number RPH 37110 is placed on probation or until
28 Pharmacist License Number RPH 37110 is reinstated if it is revoked.

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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 Registered Pharmacist License Number RPH 37110, issued to Kimball Leslie Nilsson;

2. Prohibiting Kimball Leslie Nilsson from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 37110 is placed on probation or until Pharmacist License Number RPH 37110 is reinstated if Pharmacist License Number RPH 37110 issued to Kimball Leslie Nilsson is revoked;

3. Ordering Kimball Leslie Nilsson 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; and,

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

DATED: July 6, 2020 _____



ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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