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

11 In the Matter of the Accusation Against:

Case No. 6317

12 **HENRY CHAN**
13 **7012 Sitio Frontera**
Carlsbad, California 92009

A C C U S A T I O N

14 **Pharmacist License No. RPH 56135**

15 **&**

16 **FOUNDATION HEALTH PLAN, INC. dba**
17 **KAISER PERMANENTE PHARMACY #249**
18 **17140 Bernardo Center Drive, Suite 160**
San Diego, California 92118

19 **Pharmacy Permit No. PHY 49886**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about September 14, 2004, the Board issued Pharmacist License Number
27 RPH 56135 to Henry Chan (Respondent). The Pharmacist License will expire on August 31,
28 2018, unless renewed. The Pharmacist License was in full force and effect until January 12,

1 2018, when the Pharmacist License was suspended by stipulation of the parties. The Interim
2 Suspension Order was signed by the Administrative Law Judge at the Office of Administrative
3 Hearings on January 12, 2018.

4 3. On or about March 25, 2009, the Board issued Pharmacy Permit Number
5 PHY 49886 to Foundation Health Plan, Inc., doing business as Kaiser Permanente Pharmacy #249
6 (Respondent Pharmacy). From December 2, 2013 through October 25, 2017, Respondent Chan
7 was the pharmacist-in-charge. The Pharmacy Permit was in full force and effect at all times
8 relevant to the charges and allegations brought herein and will expire on November 1, 2018,
9 unless renewed.

10 JURISDICTION

11 4. This Accusation is brought before the Board under the authority of the following
12 laws. All section references are to the Business and Professions Code (Code) unless otherwise
13 indicated.

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

17 6. Section 4300, subdivision (a), of the Code states that "Every license issued may be
18 suspended or revoked."

19 7. Section 4300.1 of the Code states:

20 The expiration, cancellation, forfeiture, or suspension of a board-issued license
21 by operation of law or by order or decision of the board or a court of law, the
22 placement of a license on a retired status, or the voluntary surrender of a license by a
23 licensee shall not deprive the board of jurisdiction to commence or proceed with any
24 investigation of, or action or disciplinary proceeding against, the licensee or to
25 render a decision suspending or revoking the license.

24 STATUTORY & REGULATORY PROVISIONS

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

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

...

1 (b) Incompetence.

2 (c) Gross negligence.

3 ...

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

6 ...

7 (h) The administering to oneself, of any controlled substance, or the use of
8 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
dangerous or injurious to oneself, to a person holding a license under this chapter,
9 or to any other person or to the public, or to the extent that the use impairs the
ability of the person to conduct with safety to the public the practice authorized by
10 the license.

11 (i) Except as otherwise authorized by law, knowingly selling, furnishing,
giving away, or administering, or offering to sell, furnish, give away, or administer,
12 any controlled substance to an addict.

13 (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.

14 ...

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
17 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
18 evidence of unprofessional conduct. In all other cases, the record of conviction
shall be conclusive evidence only of the fact that the conviction occurred. The
19 board may inquire into the circumstances surrounding the commission of the crime,
in order to fix the degree of discipline or, in the case of a conviction not involving
20 controlled substances or dangerous drugs, to determine if the conviction is of an
offense substantially related to the qualifications, functions, and duties of a licensee
21 under this chapter. A plea or verdict of guilty or a conviction following a plea of
nolo contendere is deemed to be a conviction within the meaning of this provision.
22 The board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
24 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

25 ...

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 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
28 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

1 (p) Actions or conduct that would have warranted denial of a license.

2

3 9. Section 4059, subdivision (a), of the Code states:

4 A person may not furnish any dangerous drug, except upon the prescription of
5 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
6 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7.

7 10. Section 4060 of the Code states:

8 A person shall not possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
10 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
11 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not

12 apply to the possession of any controlled substance by a manufacturer, wholesaler,
13 pharmacy, third-party logistics provider, pharmacy, pharmacist, physician,
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
14 nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers
correctly labeled with the name and address of the supplier or producer.

15 This section does not authorize a certified nurse-midwife, a nurse practitioner,
16 a physician assistant, or a naturopathic doctor, to order his or her own stock of
dangerous drugs and devices.

17 11. Section 475 of the Code states, in pertinent part:

18 (a) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the denial of licenses on the grounds of:

20

21 (2) Conviction of a crime.

22 (3) Commission of any act involving dishonesty, fraud or deceit with the
intent to substantially benefit himself or another, or substantially injure another.

23 (4) Commission of any act which, if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

24 (b) Notwithstanding any other provisions of this code, the provisions of this
division shall govern the suspension and revocation of licenses on grounds specified
25 in paragraphs (1) and (2) of subdivision (a).

26 (c) A license shall not be denied, suspended, or revoked on the grounds of a
27 lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

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12. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

13. Section 490 of the Code states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

14. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 15. Health and Safety Code section 11170 states that no person shall prescribe,
6 administer, or furnish a controlled substance for himself.

7 16. Health and Safety Code section 11171 states that no person shall prescribe,
8 administer, or furnish a controlled substance except under the conditions and in the manner
9 provided by the California Uniform Controlled Substances Act (Health and Safety Code section
10 11000 et seq.).

11 17. California Code of Regulations, title 16, section 1714, subdivision (b), states:

12 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
13 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
14 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
area to accommodate the safe practice of pharmacy.

15 18. California Code of Regulations, title 16, section 1770, states:

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

20 COST RECOVERY

21 19. Section 125.3 states that the Board may request the administrative law judge to direct
22 a licentiate found to have committed a violation or violations of the licensing act to pay a sum not
23 to exceed the reasonable costs of the investigation and enforcement of the case.

24 DRUGS

25 20. Hydrocodone¹ is a Schedule-II controlled substance under the California Uniform

26 _____
27 ¹ Hydrocodone, as used herein, also refers to hydrocodone/APAP (hydrocodone/acetaminophen). The drug
28 is marketed under the trade name Vicodin, among others.

1 Controlled Substances Act listed in Health and Safety Code section 11055, subdivision (b)(1)(I)
2 and a dangerous drug pursuant to Code section 4022.

3 21. Tramadol,² a.k.a. Ultram, Ultracet, and Zytram XL, is a federal Schedule-IV opioid
4 pain medication under section 1308.14, subdivision (b)(3) of title 21 of the Code of Federal
5 Regulations, and is classified as a dangerous drug pursuant to Code section 4022.

6 **FACTUAL ALLEGATIONS**

7 22. From December 2, 2013 to October 25, 2017, Respondent was Pharmacist-in-Charge
8 at the Kaiser Permanente Pharmacy #249 (Respondent Pharmacy) in Rancho Bernardo. In
9 October 2017, pharmacy auditors noticed discrepancies in the stock logs of hydrocodone. Logs
10 showed that on eleven (11) dates, from July 2016 through September 2017, the pharmacy could
11 not account for at least 14,400 hydrocodone tablets. An audit report, which covered the time
12 period of May 24, 2015 through October 11, 2017, listed 22,569 hydrocodone tablets as or
13 unaccounted for by the pharmacy, and over 5,600 tablets of Tramadol tablets of two different
14 dosages were also unaccounted for.

15 23. Pharmacy surveillance recorded in August and September 2017 showed Respondent
16 taking and hiding boxes of hydrocodone bottles and secreting them to his office. Each box
17 contained 12 bottles of 100 tablets each, thus totaling 1,200 tablets per box. Surveillance also
18 showed that Respondent duplicated logs to conceal his drug thefts.

19 24. The Drug Enforcement Administration (DEA) arrested Respondent on October 25,
20 2017. Respondent admitted to the drug thefts. Respondent used not only his employee
21 identification number but also the identification numbers of other employees when accessing the
22 drugs at the pharmacy. Respondent disclosed that he first stole a box of hydrocodone bottles
23 every six to eight months and then more often as his addiction intensified. Respondent admitted
24

25 ² The FDA approved labeling for Tramadol has been modified several times since its approval for marketing
26 in 1995 and now warns that "Tramadol hydrochloride may induce psychic and physical dependence ... to include
27 drug-seeking behavior and taking illicit actions to obtain the drug...." Tramadol is most commonly abused by
28 narcotic addicts, chronic pain patients, and health professionals. (Drug Enforcement Admin., Off. of Diversion
Control, Drug & Chemical Evaluation Sec., Tramadol, Drug and Chemical Information Letter (Jul. 2014), at
<https://www.deadiversion.usdoj.gov/drug_chem_info/tramadol.pdf#search=tramadol> [last visited on February 6,
2017].)

1 to taking at least 10,000 hydrocodone tablets over the past two to three years. He would consume
2 15 tablets—and later as many as 25 tablets—per day. Respondent told DEA agents that he had a
3 box of hydrocodone at his home, which agents later recovered. He also said that he stole
4 approximately 800 to 2,000 tablets of Tramadol in a failed effort to avert his addiction.

5 25. On or about November 2, 2017, the San Diego County District Attorney filed
6 criminal charges against Respondent in San Diego County Superior Court, case number
7 CD274282. On January 10, 2018, Respondent pleaded guilty to grand theft by an employee and
8 non-consensual use of personal identifying information for an unlawful purpose, both felonies.
9 (Pen. Code, §§ 487, subd. (b)(3) & 530.5, subd. (a), respectively.) Respondent agreed to pay
10 restitution to Kaiser in the amount of \$13,424.84.

11 26. On February 27, 2018, Respondent was sentenced to a three-year probation and was
12 ordered to pay fines and fees, perform 200 hours of volunteer work at a non-profit agency, pay
13 \$13,424.84 in restitution to Respondent Pharmacy's parent company Foundation Health Plan, and
14 comply with any conditions imposed by the Board of Pharmacy.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Incompetency)**

17 27. Respondent has subjected his license to disciplinary action under section 4301,
18 subdivision (b), of the Code, in that Respondent was incompetent in his practice of pharmacy, as
19 detailed in paragraphs 22 through 26, above, which are incorporated herein by reference.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Gross Negligence)**

22 28. Respondent has further subjected his license to disciplinary action under section 4301,
23 subdivision (c), of the Code, in that Respondent committed acts of gross negligence, as detailed in
24 paragraphs 22 through 26, above, which are incorporated herein by reference.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct – Moral Turpitude, Dishonesty, Fraud, Deceit, of Corruption)**

27 29. Respondent has subjected his license to disciplinary action under section 4301,
28 subdivision (f), of the Code, in that Respondent committed acts reflecting moral turpitude,

1 dishonesty, fraud, deceit, or corruption, as detailed in paragraphs 22 through 26, above, which are
2 incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Dangerous Self-Administration of Controlled Substances)**

5 30. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (h), of the Code and Health and Safety Code section 11170, in that Respondent
7 administered to himself controlled substances to the extent or in a manner as to be dangerous or
8 injurious to himself or the public, as detailed in paragraphs 22 through 26, above, which are
9 incorporated herein by reference.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Violation of Controlled Substances Laws)**

12 31. Respondent has subjected his license to disciplinary action under section 4301,
13 subdivision (j), of the Code and Health and Safety Code sections 11170 and 11171, in that
14 Respondent violated the controlled substances laws of California or the United States, as detailed
15 in paragraphs 22 through 26, above, which are incorporated herein by reference.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Conviction of Conduct Substantially-Related to
18 Professional Practice)**

19 32. Respondent has subjected his license to disciplinary action under section 4301,
20 subdivision (l), of the Code, in that Respondent was convicted of criminal conduct that is
21 substantially-related to the practice of pharmacy, as detailed in paragraphs 22 through 26, above,
22 which are incorporated herein by reference.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct – Violation of Any Provision of the Pharmacy Laws)**

25 33. Respondent has subjected his license to disciplinary action under section 4301,
26 subdivision (o), of the Code, in that Respondent violated provisions of the laws of California that
27 regulate pharmacy practice, as detailed in paragraphs 22 through 26, above, which are
28 incorporated herein by reference.

1 **PRAYER**

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

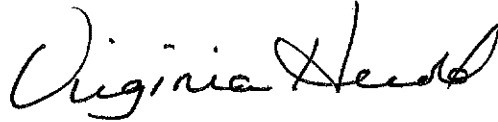
4 1. Revoking or suspending Pharmacist License Number RPH 56135, issued to
5 Respondent Henry Chan and revoking or suspending Pharmacist Permit Number PHY 49886,
6 issued to Respondent Foundation Health Plan, Inc., dba Kaiser Permanente Pharmacy #249;

7 2. Ordering Respondent Henry Chan and Respondent Foundation Health Plan, Inc., dba
8 Kaiser Permanente Pharmacy #249 to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12
13 DATED: _____

5/23/18



14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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