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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. 3228

11 RANDY ALLEN COSTERE
12 412 Hillcrest Drive
Aptos, California 95003

A C C U S A T I O N

13 Pharmacy Technician License No. TCH 44904

14 Respondent.
15

16 Complainant alleges:

17 PARTIES

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

20 2. On or about October 17, 2002, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 44904 to Randy Allen Costere (Respondent). The Pharmacy
22 Technician License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on August 31, 2010, unless renewed.

24
25 JURISDICTION

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

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

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

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

(h) The administering to oneself, of any controlled substance, or the use of 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, 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 the license.

(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.

(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 . . .

1 8. Section 4327 of the Code, in pertinent part, makes it unlawful, while on
2 duty, to sell, dispense or compound any drug while under the influence of any dangerous drug.

3 9. Health and Safety Code section 11170 provides that no person shall
4 prescribe, administer, or furnish a controlled substance for himself or herself.

5 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
6 request the administrative law judge to direct a licensee found to have committed a violation of
7 the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

8 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

9 11. Section 4021 of the Code states:

10 "‘Controlled substance’ means any substance listed in Chapter 2 (commencing
11 with Section 11053) of Division 10 of the Health and Safety Code."

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

13 "‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
14 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

17 ...

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

20 13. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand
21 names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a
22 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)
23 and dangerous drug as designated by Business and Professions Code section 4022. The varying
24 compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

25 14. **Percocet** is a brand name for a compound of acetaminophen (APAP) and
26 **oxycodone**, a Schedule II controlled substance as designated by Health and Safety Code section
27 11055(b)(1)(N) and a dangerous drug as designated by Business and Professions Code section
28 4022. It is a narcotic analgesic used for relief of moderate to severe pain.

1 15. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled
2 substance as designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as
3 designated by Business and Professions Code section 4022. It is a depressant drug.

4 16. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled
5 substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as
6 designated by Business and Professions Code section 4022. It is a depressant drug.

7 FACTUAL BACKGROUND

8 17. By his own admission, Respondent has had, since at least January 2007, an
9 addiction to narcotics or other controlled substances and/or dangerous drugs, primarily brand and
10 generic drugs containing **hydrocodone** (e.g., **Norco**) or **oxycodone** (e.g., **Percocet**).

11 18. Between at least January 2007 and September 2007, Respondent ingested
12 and self-administered significant quantities of controlled substances and dangerous drugs, mostly
13 **hydrocodone** drugs, but also some **oxycodone** drugs, **lorazepam**, and/or **alprazolam**. The exact
14 number of drugs consumed is not known, but between February 5, 2007 and August 20, 2007, an
15 average of at least 15 tablets of controlled substances were used by Respondent, a number that
16 would have affected Respondent's ability to function and perform safely in a pharmacy.

17 19. During all or most of this time period from January 2007 to and including
18 September 2007, Respondent was employed as a pharmacy technician at the Dominican Hospital
19 Pharmacy (PHY 45521) in Santa Cruz, CA. This employment ended on or about April 15, 2008.
20 For some or all of the January to September 2007 period, the duties of his employment included
21 selling, dispensing or compounding dangerous drugs. For some or all of this period, Respondent
22 was under the influence of one or more controlled substances while engaged in this employment.

23 20. On or about May 10, 2008, officers from the Santa Cruz County Sheriff's
24 Office were called to the residence of Respondent's parents, where Respondent was in the front
25 yard exhibiting signs of substance and/or alcohol abuse, including unsteadiness, vomiting, and
26 belligerence. Respondent was arrested pursuant to Penal Code section 647, subdivision (f), for
27 public intoxication or drug abuse (unable to care for his own safety or the safety of others). He
28 was subsequently released without charges being filed pursuant to Penal Code section 849.

1 FIRST CAUSE FOR DISCIPLINE

2 (Dangerous or Injurious Use of Alcohol and/or Drugs)

3 21. Respondent is subject to disciplinary action under section 4301(h) of the
4 Code, in that as described in paragraphs 17-20 above, between at least January and September
5 2007, Respondent self-administered and/or used controlled substances, dangerous drugs, and/or
6 alcoholic beverages to an extent or in a manner so as to be dangerous or injurious to himself or to
7 others, or to the extent that the use impairs his ability to conduct with safety to the public the
8 practice authorized by his Pharmacy Technician License.

9 SECOND CAUSE FOR DISCIPLINE

10 (Selling, Dispensing, or Compounding While Under the Influence)

11 22. Respondent is subject to disciplinary action under section 4301(j) and/or
12 (o) of the Code, and section 4327 of the Code, in that as described in paragraphs 17-20 above,
13 between at least January and September 2007, Respondent sold, dispensed or compounded one or
14 more drugs while under the influence of a dangerous drug, and/or directly or indirectly attempted,
15 conspired, and/or assisted in or abetted such conduct.

16 THIRD CAUSE FOR DISCIPLINE

17 (Self-Administration of Controlled Substance)

18 23. Respondent is subject to disciplinary action under section 4301(j) and/or
19 (o) of the Code, and Health and Safety Code section 11170, in that as described in paragraphs 17-
20 20 above, between at least January and September 2007, Respondent self-administered one or
21 more controlled substances in an improper or abusive manner, and/or directly or indirectly
22 attempted, conspired, and/or assisted in or abetted such conduct.

23
24 PRAYER

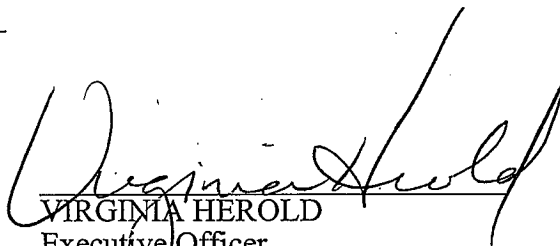
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

27 A. Revoking or suspending Pharmacy Technician License Number TCH
28 44904, issued to Randy Allen Costere (Respondent);

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

3 C. Taking such other and further action as is deemed necessary and proper.
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5 DATED: 4/10/09
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VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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