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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. 3252
CALEB THOMAS GARLIPP 1676 Le Roy Avenue Berkeley, CA 94709 Pharmacy Technician License No. TCH 74999 Respondent.	**ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 28, 2007, the Board of Pharmacy issued Pharmacy Technician License Number TCH 74999 to Caleb Thomas Garlipp (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein. It expired on January 31, 2009, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section 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 AND REGULATORY 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:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

(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.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

(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, including regulations established by the board or by any other state or federal regulatory agency.

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

9. California Code of Regulations, title 16, section 1770, provides that for the purpose(s) of license discipline, a crime or act shall be considered substantially related to the 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 the license or registration in a manner consistent with the public health, safety, or welfare.

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

11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

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

13. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances or a prescription therefor, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c), or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic, absent a prescription.

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15. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess for sale certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b) or (c)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug.

16. Health and Safety Code section 11352, in pertinent part, makes it unlawful to transport, import, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, without a valid prescription.

17. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

18. Health and Safety Code section 11378, in pertinent part, makes it unlawful to possess for sale any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f).

19. Health and Safety Code section 11379, in pertinent part, makes it unlawful for any person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import, sell, furnish, administer, or give away, any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

20. Health and Safety Code section 11550, in pertinent part, makes it unlawful to use or be under the influence of certain Schedule I controlled substances (e.g., those in Health and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when administered by or under the direction of an authorized licensee.

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

22. Section 4021 of the Code states:

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

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

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

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

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

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

26. **OxyContin** is a brand name for **oxycodone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(N) and a dangerous drug as designated by Business and Professions Code section 4022. It is an opiate drug.

27. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

28. **Morphine (sulfate)** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by section 4022 of the Code. It is a narcotic drug..

29. **Duragesic** (patch) is a brand name for **fentanyl**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(8) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

30. **Dexedrine** is a brand name for **dextroamphetamine sulfate**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1) and dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

31. **Methadose** is a brand name for **methadone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(14) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

32. **Ritalin** is a brand name for **methylphenidate**, a Scheduled II controlled substance as designated by Health and Safety Code section 11055(d)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

33. **Cocaine** is a Schedule I (in base form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FACTUAL BACKGROUND

34. From on or about February 27, 2007 until on or about September 4, 2007, Respondent was employed as a pharmacy technician at a Walgreens Pharmacy (PHY 41885) in Oakland, CA. In that position, he had access to controlled substances and dangerous drugs.

35. On repeated occasions in and/or between in or around May 2007 and in or around September 2007, the exact dates of which are unknown, Respondent took advantage of that access to divert/steal multiple controlled substances and dangerous drugs from Walgreens' stock. The exact types and quantities of drugs taken by Respondent are unknown, but by his own admission included thefts of at least multiple bottles and/or doses of the drugs **Vicodin**, **Xanax**, **OxyContin**,**Valium**, **Morphine** and **Duragesic** (**fentanyl**) patches (or generic equivalent(s)).

36. Respondent admitted to hiding bottles of the drugs on his person in order to take them from the Walgreens pharmacy. Respondent admitted to selling the drugs on the street, and also to trading the stolen controlled substances for (base/rock) **cocaine** for personal use. He further admitted to doing so because of financial problems and his own drug addiction.

37. On or about February 29, 2008, Walgreens completed an (amended) DEA 106 form (Report of Theft or Loss of Controlled Substances) listing losses due to theft prior to September 4, 2007 (on which date Respondent was terminated from employment) of $42,419.00 worth of drugs, consisting of 100 tablets of **Dexedrine**, 22 **Duragesic** patches, 4,813 tablets of **Methadose**, 15 tablets of **Ritalin**, 2,941 tablets of **OxyContin**, 657 tablets of **Xanax**, 536 tablets of **Valium**, 2,303 tablets of **Vicodin**, 501 tablets of **Lortab**, and 10,623 tablets of **Norco** (or their generic equivalent(s)), a total of 22,511 dose units of controlled substances believed stolen.

38. On or about September 1, 2007, Respondent was taken into custody and/or arrested by Oakland Police on suspicion of violating Health and Safety Code section 11350(a) (Possession of Controlled Substance - base/rock **cocaine**) and Health and Safety Code section 11364 (Possession of Drug Paraphernalia). Based on this arrest, on or about September 5, 2007, in a case titled *People v. Caleb Garlipp*, Case No. 532777 in Alameda County Superior Court, Respondent was charged by felony Complaint with violating Health and Safety Code section 11350(a) (Possession of Controlled Substance - base/rock **cocaine**), a felony.

39. On or about September 4, 2007, based on the conduct described above in paragraphs 34-37, Respondent was taken into custody and/or arrested by Oakland Police on suspicion of violating Penal Code section 503 (Embezzlement), with an additional charge under Penal Code section 12022.1 (Commission of a Felony While Out on Bail/Recognizance). On or about September 6, 2007, in a case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or 532839 in Alameda County Superior Court, Respondent was charged by felony Complaint with violating Penal Code section 487(a) (Grand Theft > $400), a felony. On or about September 11, 2007, Respondent entered a plea of no contest and was found guilty/convicted of violating Penal Code section 487(a) (Grand Theft > $400), a felony. Pursuant to the plea, the charge(s) in Case No. 532777 (paragraph 38, above) against Respondent was/were dismissed.

40. Following his plea, Respondent was sentenced on or about September 11, 2007 as follows: Sixteen (16) months state prison, with that sentence suspended for Respondent to enter and complete a six (6) month residential treatment program. If he successfully completes the treatment program, he will be placed on five (5) year felony probation, and upon his payment of full restitution to Walgreens the charge will be retroactively reduced to a misdemeanor. If he fails to successfully complete the treatment program, he will have to serve the sixteen (16) month state prison term, and is also subject to a maximum prison sentence of three (3) years.

FIRST CAUSE FOR DISCIPLINE

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

41. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 34 to 40 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

42. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 34 to 40 above, administered one or more controlled substances to himself, including (base/rock, "crack") **cocaine** products.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

43. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that as described in paragraphs 38 to 40 above, on or about September 11, 2007, in a criminal case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or 532839 in Alameda County Superior Court, Respondent was convicted on his plea of nolo contendere of violating Penal Code section 487(a) (Grand Theft > $400), a felony.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

44. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code in that Respondent, as described in paragraphs 34 to 40 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

FIFTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

45. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that Respondent, as described in paragraphs 34 to 40 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

SIXTH CAUSE FOR DISCIPLINE

(Self-Administration/Use of Controlled Substance)

46. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in paragraphs 34 to 40 above, self-administered/used, conspired to self-administer/use, and/or assisted in/abetted self-administration/use of, a controlled substance, without prescription.

SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

47. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 34 to 40 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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EIGHTH CAUSE FOR DISCIPLINE

(Possession or Purchase of Controlled Substance for Sale/Furnishing)

48. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11351, 11378, and/or 11379, in that Respondent, as described in paragraphs 34 to 40 above, possessed or purchased a controlled substance for sale, or conspired and/or assisted in or abetted such possession or purchase for sale, and/or transported, imported, sold, furnished, administered, gave away, offered to transport, import, sell, furnish, administer, or give away, or conspired and/or assisted in or abetted such transportation, importation, sale, furnishing, administration, or gifting of, a controlled substance.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

49. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 34 to 48 above, engaged in unprofessional conduct.

PRAYER

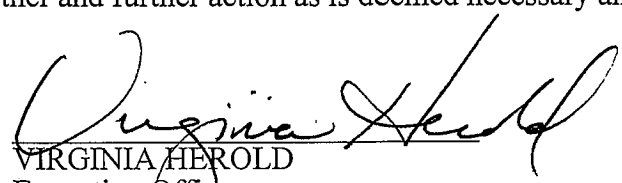
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

A. Revoking or suspending Pharmacy Technician License Number TCH 61671, issued to Caleb Thomas Garlipp (Respondent);

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

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

DATED: 6/5/09



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