EDMUND G. BROWN JR., Attorney General
of the State of California
LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
AMANDA DODDS
Legal Analyst
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2141
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: KRISTAL R. MCDONALD 6367 Jack Hill Drive Oroville, CA 95966 Pharmacy Technician Reg. No. TCH 33305 Respondent.	Case No. 3255 **A C C U S A T I O N**

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 May 18, 2000, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 33305 to Kristal R. McDonald (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

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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 unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides 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.

STATUTORY PROVISIONS

5. Section 4300, subdivision (a) of the Code states that "every license issued may be suspended or revoked."

6. Section 4301 of the Code states:

> The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
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> . . . .
>
> (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.
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> . . . .
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> (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.
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> . . . .
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> (j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
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> . . . .
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> (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.

. . . .

7. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, 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.

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

(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.

8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 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.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7,or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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10. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally --

. . . .

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

. . . .

DRUGS

12. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin, Norco, and Lortab, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

13. Carisoprodol, the generic name for Soma, is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTS

14. Respondent was employed as a pharmacy technician at a San Juan Capistrano Costco store from May 14, 2007, until she was terminated on November 20, 2007. In or around November 2007, the Drug Enforcement Agency (DEA) was alerted by a Costco employee to possible illegal drug activity on the part of Respondent. Costco's Regional Pharmacy Manager directed an audit of Respondent's prescriptions, which revealed discrepancies with the store's inventory of hydrocodone and Soma.

15. On or about November 19 and 20, 2007, a full audit of hydrocodone products was conducted. It was determined that 2,765 hydrocodone-containing tablets were missing from inventory.

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16. On or about November 20, 2007, Respondent met with various Costco loss prevention personnel at the store. Respondent admitted that she had been abusing prescription medications and was interested in the employee assistance program. Respondent admitted that she had stolen approximately 200 tablets of carisoprodol (Soma) and 150 tablets of hydrocodone products from Costco for her personal use.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)

17. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that on or about May 14, 2007 and November 19, 2007, while working as a pharmacy technician, Respondent admitted stealing controlled substances and dangerous drugs from her employer, Costco, using fraud, deceit, and dishonesty, as detailed in paragraphs 14-16, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Possession of Controlled Substances & Dangerous Drugs)

18. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that on or about May 14, 2007 and November 19, 2007, while working as a pharmacy technician, Respondent knowingly violated Business and Professions Code sections 4022, 4059, and 4060 in that she furnished to herself and was in possession of controlled substances and dangerous drugs without a prescription, as detailed in paragraphs 14-16, above.

THIRD CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances and Dangerous Drugs)

19. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that on or about May 14, 2007 and November 19, 2007, while working as a pharmacy technician, Respondent self-administered controlled substances and dangerous drugs, and admitted that she was addicted to prescription medications, as detailed in paragraphs 14-16, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violating Federal & State Laws & Regulations Governing Pharmacy)

20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that on or about May 14, 2007 and November 19, 2007, while working as a pharmacy technician, Respondent violated Title 21 United States Code section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in paragraphs 14-16, above.

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 Pharmacy Technician Registration Number TCH 33305, issued to Kristal R. McDonald;

2. Ordering Kristal R. McDonald 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;

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

DATED: 3/19/09

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

SD2009803480