

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVIR, State Bar No. 197268
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5333
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3313

13 **KIMBERLY ANN HART**

14 P.O. Box 75
Valley Springs, CA 95252

15 3463 Hart Vickson Lane
Valley Springs, CA 95252

16 Pharmacy Technician License No. TCH 76431

17 Respondent.

A C C U S A T I O N

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19 Complainant alleges:

20 PARTIES

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

23 2. On or about June 18, 2007, the Board of Pharmacy issued Pharmacy
24 Technician License Number TCH 76431 to Kimberly Ann Hart (Respondent). Ms. Hart's
25 pharmacy technician license was in full force and effect at all times relevant to the charges
26 brought herein and expired on February 28, 2009, unless renewed.

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JURISDICTION

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

5 4. Section 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and
9 found guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not
13 exceeding one year.

14 (4) Revoking his or her license.

15 (5) Taking any other action in relation to disciplining him or her as
16 the board in its discretion may deem proper.

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18 5. Section 4301 of the Code states, in pertinent part:

19 The board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been procured by fraud or
21 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
22 is not limited to, any of the following:

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

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28 (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, or any other state, or of
the United States regulating controlled substances and dangerous drugs.

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in
2 or abetting the violation of or conspiring to violate any provision or term of this
3 chapter or of the applicable federal and state laws and regulations governing
4 pharmacy, including regulations established by the board or by any other state or
5 federal regulatory agency.

6 6. Section 4060 of the Code states, in pertinent part:

7 No person shall possess any controlled substance, except that furnished to
8 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
9 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
11 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
12 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
13 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
14 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

15 7. Health and Safety Code section 11209, subdivision (a) states:

16 (a) No person shall deliver Schedule II, III, or IV controlled substances to a
17 pharmacy or pharmacy receiving area, nor shall any person receive controlled
18 substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or
19 authorized receiving personnel signs a receipt showing the type and quantity of
20 the controlled substances received. Any discrepancy between the receipt and the
21 type or quantity of controlled substances actually received shall be reported to the
22 delivering wholesaler or manufacturer by the next business day after delivery to
23 the pharmacy.

24 8. Section 118, subdivision (b), of the Code provides that the expiration of a
25 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
26 period within which the license may be renewed, restored, reissued or reinstated.

27 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
28 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.

CONTROLLED SUBSTANCES AT ISSUE

10 10. "Vicodin", "Norco", and "Lortab" are brand names for hydrocodone with
11 acetaminophen, which is an opiate and a Schedule III controlled substance as designated by
12 Health & Safety Code section 11056, subdivision (e)(4).

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1 11. "Vicoprofen", a brand name for hydrocodone with ibuprofen, is an opiate
2 and a Schedule III controlled substance as designated by Health & Safety Code section 11056,
3 subdivision (e)(4).

4 12. "Oxycontin", a brand name for morphine, is an opiate and a Schedule II
5 controlled substance as designated by Health & Safety Code section 11055, subdivision (1)(m).

6 13. "Oxycodone" is an opiate and a Schedule II controlled substance as
7 designated by Health and Safety Code section 11055(b)(1)(n).

8 9 10	BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B&P SECTION 4022	CONTROLLED SUBSTANCE PER H&S CODE	INDICATIONS FOR USE
11	Vicodin, Norco, Lortab	Hydrocodone/ acetaminophen	Yes	Yes: Schedule III - H&S 11056(e)(4)	Pain
12	Vicoprofen	Hydrocodone/ ibuprofen	Yes	Yes: Schedule III- 11056(e)(4)	Pain
13	Oxycontin	Morphine	Yes	Yes: Schedule II- 11055(1)(m)	Pain
14	Oxycodone	Oxycodone	Yes	Yes: Schedule II- 11055(1)(n)	Pain

17 FIRST CAUSE FOR DISCIPLINE
18 (Fraudulent Acts)

19 14. Respondent is subject to disciplinary action under section 4301,
20 subdivision (f) in that Ms. Hart engaged in unprofessional conduct in that she conducted acts
21 involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as
22 follows:

23 15. During December of 2007, and on multiple occasions, the exact dates of
24 which are unknown, Ms. Hart fraudulently obtained approximately 531 tablets of hydrocodone-
25 containing medications (Vicodin, Norco, Lortab and Vicoprofen), as well as 200 tablets of
26 Oxycodone, from Rite Aid pharmacy, while on duty as a registered pharmacy technician in
27 violation of law.

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SECOND CAUSE FOR DISCIPLINE
(Violation of State/Federal Statutes)

16. Respondent is subject to disciplinary action under section 4301, subsections (j) and (o), in that she violated Bus. & Prof. Code section 4060 and/or Health & Safety Code section 11209, subdivision (a).

17. During December of 2007, and on multiple occasions, the exact dates of which are unknown, Respondent fraudulently appropriated approximately 531 tablets of hydrocodone-containing medications (Vicodin, Norco, Lortab, and Vicoprofen) as well as 200 tablets of oxycodone, from Rite Aid Pharmacy. In addition, Respondent was in possession the stolen hydrocodone and oxycodone, without a prescription for those controlled substances in violation of law.

THIRD CAUSE FOR DISCIPLINE
(Unlawful Self-Administration of a Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that she administered a controlled substance to herself.

19. During December of 2007, and on multiple occasions, the exact dates of which are unknown, Respondent illegally administered to herself hydrocodone-containing medication, a Schedule III controlled substance and narcotic, in violation of law.

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PRAYER

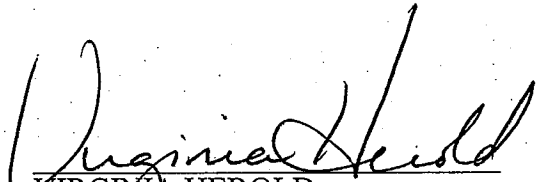
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

20. Revoking or suspending Pharmacy Technician License Number TCH 76431, issued to Kimberly Ann Hart Kimberly Ann Hart.

21. Ordering Kimberly Ann Hart 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;

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

DATED: 4/16/09


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