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| 1 | EDMUND G. BROWN JR. Attorney General of California | |
| 2 | GLORIA A. BARRIOS Supervising Deputy Attorney General | |
| 3 | Kristi Gudoski Cook | |
| 4 | Deputy Attorney General State Bar No. 185257 | |
| 5 | 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 | |
| 6 | Telephone: (213) 620-6343 Facsimile: (213) 897-2804 | ĺ |
| 7 | Attorneys for Complainant | |
| 8 | BEFORE THE | |
| 9 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS | |
| 10 | STATE OF CALIFORNIA | |
| 11 | In the Matter of the Accusation Against: Case No. 3325 | |
| 12 | JOSEPH L. SALAS A C C U S A T I O N | |
| 13 | 15369 Daybreak Lane Fontana, CA 92337 | Ì |
| 14 | Pharmacy Technician Registration No. TCH 41750 | |
| 15 | Respondent. | |
| 16 | | |
| 17 | Complainant alleges: | |
| 18 | PARTIES | |
| 19 | 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official | |
| 20 | capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs. | |
| 21 | 2. On or about March 26, 2002, the Board of Pharmacy (Board) issued Pharmacy | |
| 22 | Technician Registration Number TCH 41750 to Joseph L. Salas (Respondent). The Pharmacy | |
| 23 | Technician Registration was in full force and effect at all times relevant to the charges brought | |
| 24 | herein and will expire on January 31, 2010, unless renewed. | |
| 25 | JURISDICTION | |
| 26 | 3. This Accusation is brought before the Board under the authority of the following | - |
| 27 | laws. All section references are to the Business and Professions Code unless otherwise indicated. | |
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| 1 | STATUTORY PROVISIONS |
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| 2 | 4. Section 4300, subdivision (a) states: "Every license issued may be suspended or |
| 3 | revoked." |
| 4 | 5. Section 4301 states, in pertinent part: |
| 5 | "The board shall take action against any holder of a license who is guilty of unprofessional |
| 6 | conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. |
| 7 | Unprofessional conduct shall include, but is not limited to, any of the following: |
| 8 | |
| 9 | "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or |
| 10 | corruption, whether the act is committed in the course of relations as a licensee or otherwise, and |
| 11 | whether the act is a felony or misdemeanor or not. |
| 12 | •••• |
| 13 | "(j) The violation of any of the statutes of this state, of any other state, or of the United |
| 14 | States regulating controlled substances and dangerous drugs. |
| 15 | |
| 16 | "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the |
| 17 | violation of or conspiring to violate any provision or term of this chapter [the Pharmacy Law |
| 18 | (section 4600, et seq.)] or of the applicable federal and state laws and regulations governing |
| 19 | pharmacy, including regulations established by the board or by any other state or federal |
| 20 | regulatory agency." |
| 21 | 6. Section 4059, subdivision (a), states: |
| 22 | "A person may not furnish any dangerous drug except upon the prescription of a physician, |
| 23 | dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. |
| 24 | A person may not furnish any dangerous device, except upon the prescription of a physician, |
| 25 | dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7." |
| 26 | 7. Section 4063 states: |
| 27 | "No prescription for any dangerous drug or dangerous device may be refilled except upon |
| 28 | authorization of the prescriber. The authorization may be given orally or at the time of giving the |
| | 2 |

original prescription. No prescription for any dangerous drug that is a controlled substance may 1 be designated refillable as needed." 2 Health and Safety Code section 11158, subdivision (a), states, in pertinent part: 8. 3 "Except as provided in Section 11159 or when dispensed directly to an ultimate user by a 4 practitioner other than a pharmacist or pharmacy, no controlled substance classified in Schedule 5 III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter." 6 CONTROLLED SUBSTANCE/DANGEROUS DRUG 7 Norco (trade name for generic Hydrocodone/APAP) is a Schedule III controlled 9. 8 substance as designated by Health and Safety Code section 11056, subdivisions (a) and (e), and is 9 a dangerous drug as defined in section 4022. 10 Section 4022 states, in pertinent part: 10. 11 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in 12 humans or animals, and includes the following: 13 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without a 14 prescription,' 'Rx only,' or words of similar import. 15 16 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on 17 prescription or furnished pursuant to Section 4006." 18 COST RECOVERY PROVISION 19 Section 125.3 provides, in pertinent part, that the Board may request the 11. 20 administrative law judge to direct a licentiate found to have committed a violation or violations of 21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 22 enforcement of the case. 23 FIRST CAUSE FOR DISCIPLINE 24 (Unprofessional Conduct/Act Involving Moral Turpitude, Dishonesty, Fraud or Deceit) 25 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), for 26 committing acts involving moral turpitude, dishonesty, fraud or deceit. The circumstances are as 27 follows: 28 3

On numerous occasions, while employed as a pharmacy technician at Kaiser a. Permanente Pharmacy, Respondent processed and filled or re-filled fake prescriptions for Norco (Hydrocodone/APAP) [hereafter referred to as "the drug"], and then dispensed and furnished the drug to a relative of an acquaintance.

As part of Respondent's dishonest and fraudulent scheme to divert the drug from the b. 5 pharmacy, he engaged in the following acts: Respondent accessed the pharmacy computer 6 system, using another employee's access code. He filled fake prescriptions for the drug without 7 authorization from a provider. He would put the prescription drug in a bag and hand it someone 8 at the sales window. He would find a random sales slip that had been generated for some other 9 customer's prescription, and ask an employee at the cash register to ring up the fake prescription 10 using that sales slip. After the sale, Respondent would delete the fake prescription from the 11 pharmacy computer system. 12

SECOND CAUSE FOR DISCIPLINE

(Furnishing a Dangerous Drug/Controlled Substance Without Authorization)

Respondent is subject to disciplinary action under section 4301, subdivisions (j) and 13. 15 (o), section 4059, subdivision (a), and section 4063, in conjunction with Health and Safety Code 16 section 11158, subdivision (a), for furnishing a dangerous drug/controlled substance without a 17 prescription or authorization from a prescriber. Complainant refers to and incorporates all the 18 allegations set forth in paragraphs 12.a and 12.b, inclusive, as though set forth fully. 19

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| 1 | PRAYER |
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| 2 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 3 | and that following the hearing, the Board issue a decision: |
| 4 | 1. Revoking or suspending Pharmacy Technician Registration Number TCH 41750, |
| 5. | issued to Joseph L. Salas. |
| 6 | 2. Ordering Joseph L. Salas to pay the Board the reasonable costs of the investigation |
| 7 | and enforcement of this case, pursuant to Business and Professions Code section 125.3; |
| 8 | 3. Taking such other and further action/as deemed necessary and proper. |
| 9 | interior (Friend) |
| 10 | DATED: 10/5/09 <u>Virginia K. HEROLD</u> |
| 11 | Executive Officer Board of Pharmacy |
| 12 | Department of Consumer Affairs State of California |
| 13 | Complainant |
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