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

11 In the Matter of the Accusation Against:
12 **CAROLYN BARTON-TYLIJ**
812 Clover Road, #7
13 Tracy, Ca 95376
14 Pharmacy Technician Registration Number
15 TCH 33671
16 Respondent.

Case No. 3382

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about June 29, 2000, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 33671 to Carolyn Y. Barton-Tylij (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on November 30, 2011, unless renewed.

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JURISDICTION

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

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

STATUTORY PROVISIONS

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9 5. Section 4301 of the Code states:

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

13

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

16

17 (j) The violation of any of the statutes of this state, or any other state, or of the
18 United States regulating controlled substances and dangerous drugs.

18

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
20 abetting the violation of or conspiring to violate any provision or term of this chapter
21 or of the applicable federal and state laws and regulations governing pharmacy,
22 including regulations established by the board or by any other state or federal
23 regulatory agency.

22 (p) Actions or conduct that would have warranted denial of a license.

23 6. Section 480 of the Code states:

24 (a) A board may deny a license regulated by this code on the grounds that the
25 applicant has one of the following:

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27 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
28 substantially benefit himself or herself or another, or substantially injure another.

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7. Health and Safety Code Section 11173 states, in part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

....

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

8. 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."

9. Code section 4307 states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed

1 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
2 the Government Code. However, no order may be issued in that case except as to a
3 person who is named in the caption, as to whom the pleading alleges the applicability
4 of this section, and where the person has been given notice of the proceeding as
5 required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
6 the Government Code. The authority to proceed as provided by this subdivision shall
7 be in addition to the board's authority to proceed under Section 4339 or any other
8 provision of law.

9
10 **CONTROLLED SUBSTANCES/DANGEROUS DRUG AT-ISSUE**

11 10. **“Hydrocodone APAP”** is a compound consisting of part hydrocodone bitartrate,
12 also known as dihydrocodeinone, and part acetaminophen per tablet, is a Schedule III controlled
13 substance as designated by Health and Safety Code section 11056, subdivision (e)(4) and a
14 dangerous drug in that its procurement requires a prescription.

15 11. **“Flonase”** is a brand name for fluticasone propionate and is a dangerous drug in
16 that its procurement requires a prescription.

17 **COST RECOVERY**

18 12. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/
19 Director may request the administrative law judge to direct a licentiate found to have committed a
20 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
21 investigation and enforcement of the case.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Commission of Dishonest Acts)**

24 13. Respondent is subject to disciplinary action pursuant to Code section 4301,
25 subdivision (f), on the grounds of unprofessional conduct, on or about June 10, 2006, to April 9,
26 2008, Respondent, while employed as a pharmacy technician at Walgreens #2680 in Stockton,
27 California, stole approximately 9021 tablets of Hydrocodone APAP. The circumstances are that
28 on or about April 9, 2008, Respondent compiled two prescription bags and labeled both bags as
containing Flonase. Respondent stated to her colleague that she was going to deliver the Flonase
to her friend, Beth Owen, during her dinner break. Prior to the prescription bags being delivered
by Respondent, the Pharmacists-in-Charge inspected the bags. One bag contained Flonase for
Beth Owens. However, the second bag contained three separate bottles containing Hydrocodone
APAP 10/325 and each bottle had a different patient's name affixed to it, none of which was the

1 name of Beth Owens. Investigator review of video surveillance revealed numerous occasions
2 during which Respondent would pass prescription bags over the counter to Beth Owens, which
3 were not associated with the prescriptions that were cashed out of the register during the relevant
4 time frame. Since Respondent's termination date, all Hydrocodone APAP tablets are accounted
5 for and no discrepancies have arisen. Such conduct by Respondent involves acts of moral
6 turpitude, dishonesty, fraud, deceit, or corruption.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Violations of Statutes Regulating Controlled Substances/Dangerous Drugs)**

9 14. Respondent is subject to disciplinary action pursuant to Code section 4301,
10 subdivision (j), on the grounds of unprofessional conduct, in that on or about June 10, 2006 to
11 April 9, 2008, Respondent, while employed as a pharmacy technician at Walgreens #2680 in
12 Stockton, California, violated Health and Safety Code Section 11173, subdivision (a) when
13 Respondent obtain controlled substances, by fraud, deceit, misrepresentation, or subterfuge and/or
14 by the concealment of a material fact, as more fully set forth in paragraph 13, above.

15 15. Respondent is subject to disciplinary action pursuant to Code section 4301,
16 subdivision (j), on the grounds of unprofessional conduct, in that on or about June 10, 2006 to
17 April 9, 2008, Respondent, while employed as a pharmacy technician at Walgreens #2680 in
18 Stockton, California, violated Health and Safety Code Section 11173, subdivision (d) when
19 Respondent affixed a false/forged label of Flonase to a package or receptacle containing the
20 controlled substance Hydrocodone APAP, as more fully set forth in paragraph 13, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Acts Constituting a Basis for Denial)**

23 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
24 subdivision (p), on the grounds of unprofessional conduct, as defined in section 480, subdivision
25 (a)(2), in that Respondent committed acts which if done by an unlicensed person would be
26 grounds for denial of a license, such act involving dishonesty, fraud, or deceit with the intent to
27 substantially benefit herself or another, or substantially injure another, as more fully set forth in
28 paragraph 13, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Acts Violating Pharmacy Law)**

3 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (o), on the grounds of unprofessional conduct in that Respondent violated and
5 assisted in the violation of provisions of the Business and Professions Code Pharmacy Chapter,
6 and the law regulating pharmacy, as more fully set forth in paragraphs 13-16, above.

7 **OTHER MATTERS**

8 18. Pursuant to Code section 4307, if discipline is imposed on Pharmacy technician
9 License Number TCH 33671 issued to Carolyn Y. Barton-Tyliij, Respondent shall be prohibited
10 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
11 of a licensee.

12 **PRAYER**

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

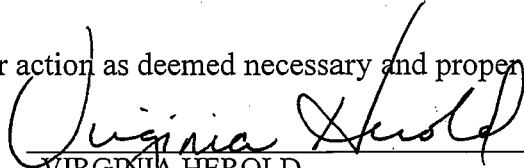
15 1. Revoking or suspending Pharmacy Technician License Number TCH 33671, issued
16 to Carolyn Y. Barton-Tyliij.

17 2. Prohibiting Carolyn Y. Barton-Tyliij from serving as a manager, administrator, owner,
18 member, officer, director, associate, or partner of a licensee during the period that discipline is
19 imposed on Pharmacy Technician License Number TCH 33671, issued to Carolyn Y. Barton-
20 Tyliij.

21 3. Ordering Carolyn Y. Barton-Tyliij to pay the Board of Pharmacy the reasonable costs
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code
23 section 125.3;

24 4. Taking such other and further action as deemed necessary and proper

25 DATED: 1/11/10



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