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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3439

11 **MARY K. SMITH**  
12 **921 Drake Avenue**  
13 **Marin City, CA 94965**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 60321**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about January 11, 2005, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 60321 to Mary K. Smith (Respondent). The Pharmacy Technician License  
22 was in full force and effect at all times relevant to the charges brought herein and will expire on  
23 September 30, 2010, unless renewed.

24 JURISDICTION

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

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

5 8. California Code of Regulations, title 16, section 1770, states:

6 "For the purpose of denial, suspension, or revocation of a personal or facility license  
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
8 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
9 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
10 licensee or registrant to perform the functions authorized by her license or registration in a  
11 manner consistent with the public health, safety, or welfare."

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

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

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

18 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
19 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
20 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
21 or subterfuge; or (2) by the concealment of a material fact.

22 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
23 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
24 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

25 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess  
26 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health  
27 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

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1 COST RECOVERY

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

5 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

6 16. Section 4021 of the Code states:

7 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
8 11053) of Division 10 of the Health and Safety Code.”

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

10 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
11 except veterinary drugs that are labeled as such, and includes the following:

12 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
13 prescription,’ ‘Rx only,’ or words of similar import.

14 ...

15 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
16 prescription or furnished pursuant to Section 4006.”

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

22 19. **Phenergan with Codeine** is a brand name for a compound consisting of the  
23 antihistamine **promethazine**, a dangerous drug as designated by Business and Professions Code  
24 section 4022, and **codeine**, a Schedule V controlled substance as designated by Health and Safety  
25 Code section 11058 and a dangerous drug as designated by Business and Professions Code  
26 section 4022. This drug is also known generically as **Promethazine with Codeine**. It is an  
27 antihistamine/antitussive, narcotic analgesic, and sleep aid.

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FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

28. 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 11350, in that Respondent, as described in paragraphs 21 to 24 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

29. 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 21 to 24 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.

SIXTH CAUSE FOR DISCIPLINE

(Possession or Purchase of Controlled Substance(s) for Sale)

30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 21 to 24 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or assisted in or abetted the possession or purchase for sale, of a controlled substance.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

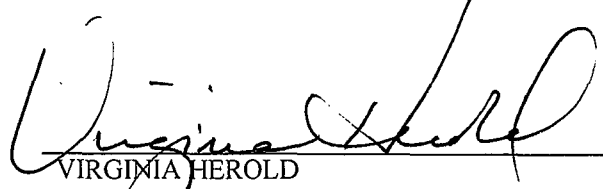
31. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 21 to 30 above, engaged in unprofessional conduct.

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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:

1. Revoking or suspending Pharmacy Technician License Number TCH 60321, issued to Mary K. Smith (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 3/29/10 

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

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