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

11 In the Matter of the Accusation Against:

Case No. 3516

12 **CARRIE LYNN MARTIN**  
11104 Myers Ranch Court  
13 Bakersfield, CA 93311

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH 18700

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 20, 1996, the Board issued Pharmacy Technician Registration  
22 Number TCH 18700 to Carrie Lynn Martin (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on September 30, 2011, 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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STATUTORY PROVISIONS

1  
2       4.    Section 118, subdivision (b), provides that the suspension, expiration, surrender or  
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
4 action during the period within which the license may be renewed, restored, reissued or  
5 reinstated.

6       5.    Section 4040, states:

7       “(a) "Prescription" means an oral, written, or electronic transmission order that is both of  
8 the following:

9       (1)   Given individually for the person or persons for whom ordered that includes all of the  
10 following:

11       (A)   The name or names and address of the patient or patients.

12       (B)   The name and quantity of the drug or device prescribed and the directions for use.

13       (C)   The date of issue.

14       (D)   Either rubber stamped, typed, or printed by hand or typeset, the name, address, and  
15 telephone number of the prescriber, his or her license classification, and his or her federal registry  
16 number, if a controlled substance is prescribed.

17       (E)   A legible, clear notice of the condition for which the drug is being prescribed, if  
18 requested by the patient or patients.

19       (F)   If in writing, signed by the prescriber issuing the order, or the certified nurse-  
20 midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order  
21 pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who  
22 issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
23 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

24       (2)   Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic  
25 doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51,  
26 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or  
27 naturopathic doctor licensed in this state, or pursuant to either subparagraph (D) of paragraph (4)

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1 of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 by a  
2 pharmacist licensed in this state.

3 (b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous  
4 drug, except for any Schedule II controlled substance, that contains at least the name and  
5 signature of the prescriber, the name and address of the patient in a manner consistent with  
6 paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and  
7 quantity of the drug prescribed, directions for use, and the date of issue may be treated as a  
8 prescription by the dispensing pharmacist as long as any additional information required by  
9 subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this  
10 subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and  
11 Safety Code shall prevail.

12 (c) "Electronic transmission prescription" includes both image and data  
13 prescriptions. "Electronic image transmission prescription" means any prescription order for  
14 which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic  
15 data transmission prescription" means any prescription order, other than an electronic image  
16 transmission prescription, that is electronically transmitted from a licensed prescriber to a  
17 pharmacy.

18 (d) The use of commonly used abbreviations shall not invalidate an otherwise valid  
19 prescription.

20 (e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969  
21 Regular Session of the Legislature shall be construed as expanding or limiting the right that a  
22 chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

23 6. Section 4051, subdivision (a), states that "[e]xcept as otherwise provided in this  
24 chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any  
25 dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to  
26 Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

27 7. Section 4059, subdivision (a), states that "[a] person may not furnish any dangerous  
28 drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or

1 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,  
2 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
3 naturopathic doctor pursuant to Section 3640.7.”

4 8. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or  
5 revoked.”

6 9. Section 4301 states, in pertinent part:

7 "The board shall take action against any holder of a license who is guilty of unprofessional  
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

9 Unprofessional conduct shall include, but is not limited to, any of the following:

10 . . . .

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

14 "(g) Knowingly making or signing any certificate or other document that falsely  
15 represents the existence or nonexistence of a state of facts.

16 . . . .

17 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or  
18 administering or offering to sell, furnish, give away, or administer any controlled substance to an  
19 addict.

20 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
21 States regulating controlled substances and dangerous drugs. . . .”

22 10. Section 4324, subdivision (a), states:

23 "(a) Every person who signs the name of another, or of a fictitious person, or falsely  
24 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription  
25 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment  
26 in the state prison, or by imprisonment in the county jail for not more than one year.”

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1770, states:

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

9 **COST RECOVERY**

10 12. Section 125.3 provides that the Board may request the administrative law judge to  
11 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
12 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

13 **CONTROLLED SUBSTANCE / DANGEROUS DRUGS**

14 13. Prilosec is categorized as a dangerous drug pursuant to section 4022.

15 14. Vicodin is a trade name for the narcotic substance hydrocodone or dihydrocodeinone  
16 with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a  
17 Schedule III controlled substance pursuant to Health and Safety Code section 11056(e), and is a  
18 dangerous drug within the meaning of section 4022.

19 **PAYLESS DRUG STORE**

20 15. In or about October 1995, through in or about January 1997, Respondent was an  
21 employee of Payless Drug Store, 110 East Cross Avenue, Tulare, California (Payless).

22 16. In or about January 1996, through in or about January 1997, admittedly, Respondent  
23 involved herself in scheme for an addict, D.W., to obtain prescriptions for Vicodin, a controlled  
24 substance and dangerous drug, without valid prescriptions for a fictitious patient, "Randy  
25 Stevens." Respondent initiated the fraud by entering a fictitious patient record<sup>1</sup> for Randy

26 <sup>1</sup> When the Payless pharmacist receives an oral prescription order for a patient, they  
27 access the patient database, and if the data for the patient is in the database, a new patient record  
28 is not created, the oral prescription order is added to the patient's record and the prescription is  
filled for patient pick-up. When a patient record is not in the pharmacy database, the oral  
(continued...)

1 Stevens into the Payless pharmacy's computer database, the same as if at one time an initiating  
2 original prescription had been submitted to the pharmacy from patient Randy Stevens.

3 17. D. W. telephoned oral prescriptions into the Payless pharmacy for patient Randy  
4 Stevens, the pharmacist would then fill the prescriptions without requiring original prescription  
5 data. D.W. would then pick-up, pay for and take away the fraudulently filled prescriptions  
6 without providing original prescription records for the received drugs.

7 18. Respondent continued to monitor D.W.'s activities in prescription furnishings for the  
8 fictitious Randy Stevens. When Respondent noticed that Randy Steven's Vicodin prescriptions  
9 were being filled without having proper breaks in time, she spoke with D.W. advising her to  
10 allow more time between each prescription furnishing.

11 19. The approximate prescription activity for Randy Stevens is as follows:

Date	Prescription No.	Drug	Count
1/21/1996	4431793	Vicodin 7.5/750	60
1/29/1996	4432403	Vicodin 7.5/750	60
2/20/1996	4433073	Vicodin 7.5/750	60
3/5/1996	4433512	Vicodin 7.5/750	60
3/28/1996	4434967	Vicodin 7.5/750	60
5/9/1996	4435542	Vicodin 7.5/750	60
5/16/1996	4435542N	Vicodin 7.5/750	60
6/11/1996	4436632	Vicodin 7.5/750	60
6/11/1996	4436632N	Vicodin 7.5/750	60
6/20/1996	4438943	Vicodin 7.5/750	60
9/4/1996	4439777	Vicodin 7.5/750	100
10/8/1996	443732	Vicodin 7.5/750	100
1/25/1997	443732	Vicodin 7.5/750	100
Total			900

22  
23 20. On or about August 2, 1996 and November 7, 1996, admittedly, Respondent falsely  
24 refilled, without valid prescription orders, Vicodin prescriptions for herself.

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27 prescription order is held for the patient to provide original prescription data to create a patient  
28 record.

1 21. On or about October 4, 1996, October 18, 1996, and November 27, 1996, admittedly,  
2 Respondent falsely refilled, without valid prescription orders, Vicodin prescriptions for her  
3 mother, L.M.

4 22. On or about January 25, 1997, Respondent retrieved on behalf of her father C.M. a  
5 valid prescription for Prilosec 20 mg from the Payless pharmacy, and failed to pay for the  
6 prescription before leaving.

7 23. On or about February 5, 1997, Payless pharmacy filed a Department of Justice, Drug  
8 Enforcement Administration, Report of Theft of Loss of Controlled Substances for the period of  
9 January 1996 through January 1997, due to employee pilferage, specifically, prescriptions in the  
10 names of Randy Stevens, Respondent, and Respondent's parents, L.M. and C.M.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(False Records)**

13 24. Respondent is subject to disciplinary action under sections 4301, subdivision (g), and  
14 4324, subdivision (a), in that in and between January 1996 through in or about January 1997,  
15 Respondent knowingly created false medical records for herself, her mother and a fictitious  
16 patient, Randy Stevens, all to circumvent her employer Payless pharmacy's prescription  
17 validation procedures. Complainant refers to and by this reference incorporates the allegations  
18 set forth above in paragraphs 15 - 23, inclusive, as though set forth fully.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Furnishing to an Addict)**

21 25. Respondent is subject to disciplinary action under sections 4300 and 4301,  
22 subdivision (i), in that in and between January 1996 through in or about January 1997,  
23 Respondent knowingly furnished approximately 900 tablets of Vicodin, a controlled substance  
24 and dangerous drug, without valid prescriptions to an addict, J.W. Complainant refers to and by  
25 this reference incorporates the allegations set forth above in paragraphs 15 - 24, inclusive, as  
26 though set forth fully.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Furnishing)

3 26. Respondent is subject to disciplinary action under sections 4300 and 4301,  
4 subdivision (j), for violating sections 4051, subdivision (a), and 4059, subdivision (a), in that in  
5 and between January 1996 through in or about January 1997, Respondent furnished dangerous  
6 drugs without valid prescriptions. Complainant refers to and by this reference incorporates the  
7 allegations set forth above in paragraphs 15 - 25, inclusive, as though set forth fully.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Dishonest Acts)

10 27. Respondent is subject to disciplinary action under sections 4300 and 4301,  
11 subdivision (f), in that in and between January 1996 through in or about January 1997,  
12 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.  
13 Complainant refers to and by this reference incorporates the allegations set forth above in  
14 paragraphs 15 - 25, inclusive, as though set forth fully.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18700,  
19 issued to Respondent;  
20 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
21 enforcement of this case, pursuant to section 125.3; and,  
22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 8/9/10

24 *Virginia Herold*

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

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