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

11 In the Matter of the Accusation Against:

Case No. 3556

12 **NICOLE TUBBS**
13 **211 B Wonsan Drive**
14 **Oceanside, CA 92054**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **80903**

17 Respondent.

18 Complainant alleges:

19
20 **PARTIES**

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

23 2. On or about January 17, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80903 to Nicole Tubbs (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on February 28, 2011, unless renewed.
27
28

not limited to, any of the following:

....

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

....

(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.

....

9. Title 16, California Code of Regulations, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

10. Title 16, California Code of Regulations, section 1770, states:

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

COST RECOVERY

11. Section 125.3 of the Code states, in pertinent part, that the Board may 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.

1 DRUG

2 12. Oxycontin is a schedule II controlled substance as designated by Health and Safety
3 Code section 11055(b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 FIRST CAUSE FOR DISCIPLINE

6 **(Unprofessional Conduct-Violating Law Regulating Controlled Substances)**

7 13. Respondent is subject to disciplinary action under section 4301(j) in that on or about
8 June 17, 2009, Respondent uttered a forged prescription for a controlled substance, Oxycontin, in
9 violation of Health and Safety Code section 11368. The circumstances are as follows:

10 a. On or about June 17, 2009, Respondent presented a prescription in her name for
11 Oxycontin, 80 mg at the Walgreens Pharmacy located at 58133 Twentynine Palms Highway in
12 Yucca Valley and requested that it be filled. Since the prescription appeared suspicious and was
13 signed by a doctor located in Los Angeles, the pharmacy manager transmitted it via facsimile to
14 the office of the doctor identified on the prescription. The doctor immediately called the
15 pharmacy manager and told him that Respondent was not her patient, she had not prescribed this
16 drug to Respondent and that the signature on the prescription was not her signature. The doctor
17 also told the investigating officer that Respondent had been passing forged prescriptions at
18 several Walgreens. The pharmacy staff located another prescription that was possibly forged by
19 Respondent. The officer subsequently confirmed it was forged when he spoke with the doctor
20 listed on that prescription and that doctor confirmed that Respondent was not his patient and he
21 had never prescribed any medication to Respondent.

22 b. On or about November 4, 2009, in a criminal proceeding entitled *People of the*
23 *State of California v. Nicole Tubbs*, case number FMB900329, Respondent pled guilty to a charge
24 of violating Health and Safety Code section 11368, uttering a forged prescription, a felony and
25 was granted deferred entry of judgment. On November 25, 2009, Respondent filed proof of
26 enrollment in a drug diversion program. The Court ordered Respondent to file proof of
27 successful completion of a drug diversion program with no violations by January 7, 2011.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct-Knowingly Making or Signing a Document Falsely Representing
3 the Existence of Facts)

4 14. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
5 on or about June 17, 2009, Respondent knowingly made and signed a document that falsely
6 represented the existence of facts, namely a forged prescription for a controlled substance as is
7 more fully described in paragraph 15, above.

8 PRAYER

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

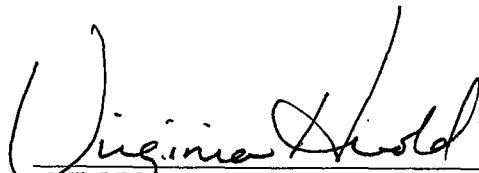
11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80903,
12 issued to Nicole Tubbs;

13 2. Ordering Nicole Tubbs to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: _____

7/2/10



20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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