

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
4 State Bar No. 144804
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3558

12 **PHYLLIS ANN FARMER**
13 **10095 Martis Valley Rd. #2C**
14 **Truckee, California 96161**

ACCUSATION

15 **Pharmacy Technician**
16 **Registration No. TCH 53610**

Respondent.

17
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 December 29, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 53610 to Phyllis Ann Farmer (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and expired on January 31, 2010..

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JURISDICTION

1
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 4300 of the Code states in pertinent part:

6 "(a) Every license issued may be suspended or revoked.

7 "(b) The board shall discipline the holder of any license issued by the board, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 following methods:

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

12 "(3) Suspending his or her right to practice for a period not exceeding one year.

13 "(4) Revoking his or her license.

14 "(5) Taking any other action in relation to disciplining him or her as the board in its
15 discretion may deem proper.

16 ...

17 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
19 shall have all the powers granted therein. The action shall be final, except that the propriety of
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
21 Civil Procedure."

22 5. Section 4301 of the Code states in pertinent part:

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

26 ...

27 ///

28 ///

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

4 ...

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

7 ...

8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter...

10 ...

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

15 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
16 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

18 7. Section 4060 of the Code states in pertinent part:

19 "No person shall possess any controlled substance, except that furnished to a person upon
20 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
21 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
22 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
23 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
24 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

26 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

4 9. Hydrocodone/Acetaminophen, also known by the brand names "Vicodin ES",
5 "Vicodin 5/500", and "Norco 10/325", is an analgesic for the control of pain, and is a Schedule
6 III Controlled Substance pursuant to Health & Safety Code section 11056(e).

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of Substantially Related Crime)**

9 10. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(l), in that on April 14, 2009 she was convicted on her plea of Nolo Contendere of one count
11 of violating Penal Code section 484(a)(Misdemeanor Theft) in the Superior Court of Nevada
12 County in the case of *People of the State of California vs. Phyllis Ann Farmer*. The
13 circumstances are as follows:

14 11. Between the dates of August 1, 2008 and January 12, 2009, while employed as a
15 pharmacy technician at Rite Aid Pharmacy in Truckee, California, she stole undetermined
16 quantities of Vicodin, Vicodin 5/500, and Norco 10/325, for her own use.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Acts of Dishonesty)**

19 12. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4301(f), in that by her own admission, she stole unknown quantities of Vicodin, Vicodin 5/500,
21 and Norco 10/325 from her employer, Rite Aid Pharmacy in Truckee, California, for her own use,
22 without having a valid prescription as set forth in paragraph 11 above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Furnishing Controlled Substances and Dangerous Drugs Without a Prescription)**

25 13. Respondent is subject to disciplinary action under sections 4059(a), 4301(j) and 4301
26 (o), in conjunction with Health and Safety Code section 11170, in that she furnished controlled
27 substances and dangerous drugs to herself without a valid prescription, as set forth in paragraphs
28 11 and 12 above.

