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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. 3570

12 **KENNETH J. PAYNE**  
13 **P.O. Box 49481**  
14 **Redding, CA 96049**

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **61842**

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 April 6, 2005, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 61842 to Kenneth J. Payne (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on June 30, 2010, unless renewed.

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JURISDICTION

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

5       4.    Code section 4300 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,  
8 whose default has been entered or whose case has been heard by the board and  
9 found guilty, by any of the 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  
13 one year.

14               (4) Revoking his or her license.

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

17           ....

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

23       5.    Code section 4301 states, in pertinent part:

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

28           ....

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

32           ....

33           (j) The violation of any of the statutes of this state or of the United States  
34 regulating controlled substances and dangerous drugs.

35           ....

36           (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
37 abetting the violation of or conspiring to violate any provision or term of this  
38 chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board.

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

6. Code section 4022 provides, in pertinent part,

"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

7. Code section 4059, subd. (a), states:

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

8. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

9. Health and Safety Code section 11350, subdivision (a), provides:

Except as otherwise provided in this division, every person who possesses . . . (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

10. Health and Safety Code section 11170 states: No person shall prescribe, administer, or furnish a controlled substance for himself.

1 **COST RECOVERY**

2 11. Code section 125.3 states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **DRUGS**

7 12. Hydrocodone/APAP (Norco) is a compound consisting of hydrocodone bitartrate also  
8 known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by Health  
9 and Safety Code section 11056(e), and acetaminophen in a tablet, and is a dangerous drug within  
10 the meaning of Code section 4022, in that under federal law it requires a prescription.

11 13. Ibuprofen 800 mg is a dangerous drug pursuant to Code section 4022 in that under  
12 federal law it requires a prescription.

13 14. Flexeril 10 mg is a brand name of Cyclobenzaprine and a dangerous drug pursuant to  
14 Code section 4022 in that under federal law it requires a prescription.

15 15. Bactrim DS is a brand name of Sulfamethoxazole/Trimethoprim and a dangerous  
16 drug pursuant to Code section 4022 in that under federal law it requires a prescription.

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Corrupt Acts - Stealing Controlled Substances and Dangerous Drugs)

19 16. Respondent is subject to disciplinary action under Code section 4301, subd. (f) in that  
20 Respondent conducted acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

21 The circumstances are as follows:

22 17. On or about January of 2009, to March of 2009, on multiple occasions, all the exact  
23 dates which are only known to Respondent, Respondent fraudulently and illegally stole  
24 approximately ninety (90) tablets of hydrocodone-containing drugs; thirty (30) Flexeril 10 mg.  
25 tablets; thirty (30) Ibuprofen 800 mg. tablets; and twenty (20) Bactrim DS tablets from Walgreens  
26 #4243, located at 980 E. Cypress Avenue in Redding, California, while on duty as a registered  
27 pharmacy technician.

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**SECOND CAUSE FOR DISCIPLINE**

(Unlawful Possession of a Controlled Substance - Hydrocodone-containing Medications)

18. Respondent is subject to disciplinary action under Code section 4301, subs. (j) and (o) in that Respondent violated the statutes of this state regulating controlled substances and dangerous drugs, namely Code section 4060 and/or Health and Safety Code section 11350, subd. (a), by possessing a controlled substance without a prescription. The circumstances are detailed above in paragraph 17.

**THIRD CAUSE FOR DISCIPLINE**

(Actions Warranting Denial of License)

19. Respondent is subject to disciplinary action under Code section 4301, subd. (p) in that Respondent engaged in conduct that would have warranted the denial of his License. The circumstances are detailed above in paragraph 17.

**FOURTH CAUSE FOR DISCIPLINE**

(Furnishing Dangerous Drugs and Controlled Substances without a Prescription).

20. Respondent is subject to disciplinary action under Code section 4301, subs. (j) and (o) in that Respondent violated the statutes of this state regulating controlled substances and dangerous drugs, namely Code section 4059, subd. (a) and/or Health and Safety Code section 11170 by furnishing controlled substances and/or dangerous drugs without a prescription. The circumstances are detailed above in paragraph 17.

**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 Registration Number TCH 61842, issued to Kenneth J. Payne.
2. Ordering Kenneth J. Payne to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/23/10 Virginia Herold  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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