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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. 3585

11 **LISA M. SMITH**  
12 **1165 Easy Street**  
13 **Morgan Hill, CA 95037**

**ACCUSATION**

14 **Pharmacy Technician License No. TCH 79731**

15 Respondent.

16 Complainant alleges:

17  
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.

21 2. On or about November 21, 2007, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 79731 to Lisa M. Smith (Respondent). The Pharmacy Technician License was  
23 in full force and effect at all times relevant to the charges brought herein and will expire on May  
24 31, 2011, unless renewed.

25 **JURISDICTION**

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



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

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

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

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

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

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

18 11. Section 4063 of the Code provides, in pertinent part, that no prescription for a  
19 dangerous drug may be refilled except upon authorization of the prescriber.

20 12. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign  
21 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as  
22 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

23 13. Health and Safety Code section 11170 provides that no person shall prescribe,  
24 administer, or furnish a controlled substance for himself or herself.

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

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

4 COST RECOVERY

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

8 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

9 17. Section 4021 of the Code states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
11 11053) of Division 10 of the Health and Safety Code.”

12 18. Section 4022 of the Code states, in pertinent part:

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

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

17 ...

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

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

25 FACTUAL BACKGROUND

26 20. From an unknown start date until on or about January 28, 2009, Respondent was  
27 employed as a pharmacy technician at a Longs Pharmacy in Morgan Hill, CA (# 342; PHY  
28 49393), where she had access to controlled substances and dangerous drugs.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance(s))

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
5 in paragraphs 20 to 23 above, furnished to herself or another without a valid prescription, and/or  
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substance(s))

9 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
10 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
11 in paragraphs 20 to 23 above, possessed, conspired to possess, and/or assisted in or abetted  
12 possession of, a controlled substance, without a prescription.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Unlawful/Forged Prescriptions/Refills of Prescriptions)

15 29. Respondent is subject to discipline under sections 4301(j) and/or (o) and/or sections  
16 4063 and/or 4324 of the Code, in that Respondent, as described in paragraphs 20 to 23 above,  
17 refilled a prescription for a dangerous drugs without prescriber authorization, signed the name of  
18 another and/or falsely made, altered, forged, uttered, published, passed, or attempted to pass, as  
19 genuine, a prescription and/or possessed drugs secured by such forged prescription, and/or  
20 conspired in, abetted, or assisted, the performance of any of the above-described acts.

21 SEVENTH CAUSE FOR DISCIPLINE

22 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

23 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
24 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
25 20 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
26 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

31. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 20 to 30 above, engaged in unprofessional conduct.

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 No. TCH 79731, issued to Lisa M. 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: \_\_\_\_\_

9/23/10

*Virginia Herold*

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

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