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

11 In the Matter of the Accusation Against:  
12 **MARK ELDON CESSNA**  
13 **2116 Winthrop Drive**  
14 **Alhambra, CA 91803**  
15 **Pharmacy Technician Registration No. TCH**  
16 **57069**  
17 Respondent.

Case No. 3591

**A C C U S A T I O N**

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.  
21 2. On or about June 25, 2004, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 57069 to Mark Eldon Cessna (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on June 30, 2012, unless renewed.

25 **JURISDICTION**

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

1           4.       Section 22 of the Code states:

2           "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
3 administration of the provision is vested, and unless otherwise expressly provided, shall include  
4 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
5 'agency.'

6           "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
7 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
8 (commencing with Section 473), is taken over by the department, that program shall be  
9 designated as a 'bureau.'"

10          5.       Section 150 of the Code states: "The department is under the control of a civil  
11 executive officer who is known as the Director of Consumer Affairs."

12          6.       Section 477 of the Code states:

13           As used in this division:

14           "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'  
15 'examining committee,' 'program,' and 'agency.'

16           "(b) 'License' includes certificate, registration or other means to engage in a  
17 business or profession regulated by this code."

18          7.       Section 118, subdivision (b), of the Code provides that the suspension/ expiration/  
19 surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to  
20 proceed with a disciplinary action during the period within which the license may be renewed,  
21 restored, reissued or reinstated.

22          8.       Section 4011 of the Code provides that the Board shall administer and enforce both  
23 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
24 Act [Health & Safety Code, § 11000 et seq.].

25          9.       Section 4038 of the Code states:

26           “(a) ‘Pharmacy technician’ means an individual who assists a pharmacist in a pharmacy in  
27 the performance of his or her pharmacy related duties, as specified in Section 4115.”

28          10.       Section 4060 of the Code provides in pertinent part:

1 "No person shall possess any controlled substance, except that furnished to a person upon  
2 the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug  
3 order issued by a certified nurse midwife, . . . a nurse practitioner. . . , or a physician assistant. . ."

4 11. Section 4104, subd. (a) provides: "Every pharmacy shall have in place procedures  
5 for taking action to protect the public when a licensed individual employed by or with the  
6 pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent  
7 it affects his or her ability to practice the profession or occupation authorized by his or her  
8 license, or is discovered or known to have engaged in the theft, diversion, or self-use of  
9 dangerous drugs."

10 12. Section 4300(a) of the Code provides that every license issued by the Board may be  
11 suspended or revoked.

12 13. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
13 against any holder of a license that is guilty of "unprofessional conduct," defined to include, but  
14 not be limited to, any of the following:

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

18 . . .

19 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
23 practice authorized by the license.

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

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



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

3           20.     Section 4022 of the Code states, in pertinent part:

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

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

8           ...

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

11          21.     “Hydrocodone” with Acetaminophen is a Schedule III narcotic controlled  
12 substance as defined by Health and Safety Code section 11056 and is categorized as a “dangerous  
13 drug” pursuant to section 4022 of the Code.

14          22.     Soma is a trade name for Carisoprodol, a muscle relaxant with dependence and  
15 side effect issues, and is categorized as a "dangerous drug" pursuant to section 4022 of the Code.

16                                 **FIRST CAUSE FOR DISCIPLINE**

17                                 (Unprofessional Conduct based on Theft of a Controlled Substance)

18          23.     Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions  
19 (f), (j), and (o), in conjunction with Health and Safety Code section 11173, subd. (a) in that  
20 between May 1, 2006 and June 21, 2007, Respondent unlawfully appropriated approximately  
21 4,454 tablets of Hydrocodone with Acetaminophen (HA) from his employer, Costco Pharmacy  
22 #428 (Costco). The circumstances are as follows:

23          24.     Respondent was employed as a pharmacy technician at Costco from July 27, 2005  
24 through June 28, 2007. In or about April, 2007, Costco manager and Pharmacist in charge,  
25 (PIC) J.L. began monitoring controlled substances, specifically the inventory of HA, following  
26 reports from two technicians, T.C. and V.P. that they witnessed Respondent place a bottle of HA  
27 10/325 mg in a tray for an order that did not contain HA 10/325 mg. PIC J.L. found the following  
28 drug shortages:

| <u>Dates</u>    | <u>Drug</u>   | <u>Quantity</u> |
|-----------------|---------------|-----------------|
| 1/21/07-4/8/07  | HA 10/325 mg  | 559             |
| 5/15/07-5/29/07 | HA 10/325 mg  | 50              |
| 5/10/07-6/04/07 | HA 10/650 mg  | 85              |
| 6/04/07-6/09/07 | HA 7.5/650 mg | 19              |
| 6/04/07-6/09/07 | HA 10/660 mg  | 39              |
| 6/19/07-6/19/07 | HA 10/325 mg  | 81              |
| 6/21/07-6/21/07 | HA 10/500 mg  | 10              |

25. On June 16, 2007, video surveillance was installed and on June 19, 2007, PIC J.L. found two empty stock bottles of HA 10/325 mg in the trash. J.L. and another employee reviewed footage for June 19, 2007 and saw Respondent's suspicious behavior that corresponded with the two empty bottles of HA found in the trash.

26. On June 21, 2007, another pharmacy technician, L.B., told J.L. that she had observed Respondent discard an empty bottle of combination HA 10/500 mg. in the trash. J.L. had observed there were ten (10) tablets of HA 10/500 mg. in the stock bottle that morning and when he retrieved it from the trash, saw that it was empty. Video monitoring confirmed that Respondent had taken the ten (10) tablets without authorization.

27. On June 21, 2007, Costco Loss Prevention manager S.B. and Assistant Warehouse Manager C.V. interviewed Respondent at the warehouse office in the presence of PIC J.L. Respondent admitted to taking HA from the pharmacy. Respondent admitted that he had begun pilfering the HA the previous year and that it was for his personal use. Respondent took J.L. to his car, where ten (10) tablets of HA 10/500mg. that had been taken earlier that day without authorization from Costco were recovered.

28. ,The following drugs were contained in an "over- the- counter" container of Loratadine 10 mg. that was recovered from Respondent's car:

| <u>Drug</u>  | <u>Quantity</u> |
|--------------|-----------------|
| Carisoprodol | 46              |

|   |              |    |
|---|--------------|----|
| 1 | HA 10/660 mg | 11 |
| 2 | HA 10/325 mg | 3  |

3           29. Subsequently, Respondent took both J.L. and S.B. to his apartment where they  
4 retrieved additional tablets of HA. The following drugs were contained in an "over- the- counter"  
5 container of Ibuprofen 200 mg. that was recovered from Respondent's apartment:

| 6  | <u>Drug</u>  | <u>Quantity</u> |
|----|--------------|-----------------|
| 7  | Carisoprodol | 46              |
| 8  | HA 10/660 mg | 11              |
| 9  | HA 10/325 mg | 3               |
| 10 | HA 10/325 mg | 31              |
| 11 | HA 10/500 mg | 8               |

12           30. Respondent voluntarily signed a statement admitting to the theft of the HA.  
13 Respondent was placed on suspension pending further review and was terminated from  
14 employment at Costco on June 28, 2007.

15           31. Respondent admitted to Board investigator Dolly Harris that he had begun taking the  
16 drugs from Costco in July, 2006 because of "job stress". Respondent admitted to diverting HA  
17 and Soma from Costco. Respondent stated he would only ingest a couple of tablets while  
18 working to avoid withdrawal symptoms and that he secreted tablets in his pockets to take home  
19 where he then ingested ten to fifteen (10-15) tablets.

20           32. Respondent admitted that he had never been prescribed HA and that he was addicted  
21 to the drug.

22           33. An audit conducted at Costco for the period of May 1, 2007 through July 28, 2007  
23 revealed the following shortages of HA tablets:

| 24 | <u>Drug</u>      | <u>Shortage</u> |
|----|------------------|-----------------|
| 25 | HA 7.5 mg/500 mg | 700             |
| 26 | HA 7.5 mg/750 mg | 539             |
| 27 | HA 10mg/325 mg   | 2,213           |

|   |                          |       |
|---|--------------------------|-------|
| 1 | HA 10mg/500 mg           | 270   |
| 2 | HA 10mg/650 mg           | 160   |
| 3 | HA 10mg/660 mg           | 56    |
| 4 | HA 5mg/500 mg            | 501   |
| 5 | HA 7.5mg/325 mg          | 15    |
| 6 | Total HA tablets missing | 4,454 |

**SECOND CAUSE FOR DISCIPLINE**

(Unprofessional Conduct based on Self Administration of  
a Controlled Substance or Dangerous Drug)

34. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions (h) and (j), in conjunction with Health and Safety Code sections 11550, subd. (a) and 11170 in that between May 1, 2006 and June 21, 2007, Respondent unlawfully self-administered approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and unknown quantities of Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully set forth.

**THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct Based on Furnishing a Controlled Substance or Dangerous Drug)

35. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions (i) and (j), in conjunction with Health and Safety Code sections 11170 and 11173, subd. (a), in that between May 1, 2006 and June 21, 2007, Respondent unlawfully furnished himself with approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and an unknown quantity of Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully set forth.

**FOURTH CAUSE FOR DISCIPLINE**

(Unprofessional Conduct Based on Possession of a Controlled Substance or Dangerous Drug)

36. Respondent is subject to disciplinary action under sections 4300, 4060, and 4301, subdivision (j), in that between May 1, 2006 and June 21, 2007, Respondent unlawfully



1 possessed approximately 4,454 tablets of Hydrocodone with Acetaminophen (HA) and an  
2 unknown quantity of Soma. The circumstances are as alleged in the preceding paragraphs 24  
3 through 33, which are incorporated herein by reference as though fully set forth.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct Based on Dispensing a Controlled Substance  
6 While Under the Influence)

7 37. Respondent is subject to disciplinary action under sections 4300, 4301, subdivisions  
8 (h) and (j), in conjunction with Health and Safety Code sections 11550, subd. (a) and Code  
9 section 4324, in that between May 1, 2006 and June 21, 2007, Respondent unlawfully dispensed  
10 controlled substances while under the influence of Hydrocodone with Acetaminophen (HA)  
11 and/or Soma. The circumstances are as alleged in the preceding paragraphs 24 through 33, which  
12 are incorporated herein by reference as though fully set forth.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct Based on Conduct That Would Have Warranted Denial of a License)

15 38. Respondent is subject to disciplinary action under sections 4300, and 4301,  
16 subdivision (p), in that his conduct between May 1, 2006 and June 21, 2007, wherein he  
17 unlawfully possessed, furnished, and administered the controlled substance Hydrocodone with  
18 Acetaminophen (HA) and/or dangerous drug Soma to himself constitutes conduct that would  
19 have warranted denial of a pharmacy technician license. The circumstances are as alleged in the  
20 preceding paragraphs 24 through 33, which are incorporated herein by reference as though fully  
21 set forth.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 57069,  
26 issued to Mark Eldon Cessna;

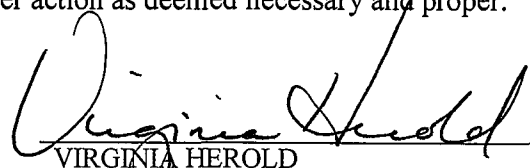
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2. Ordering Mark Eldon Cessna to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

2/23/11



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

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