

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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. 3649

11 **GREGORY JULIAN ROBINSON II**
12 **1601 Broadway Street, # 418**
13 **Concord, CA 94520**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 75222**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about April 6, 2007, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 75222 to Gregory Julian Robinson II (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on November 30, 2010, unless renewed.

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

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

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

5 8. California Code of Regulations, title 16, section 1770, provides that a crime or act is
6 substantially related to the qualifications, functions or duties of a licensee if to a substantial
7 degree it evidences present or potential unfitness to perform the functions authorized by the
8 license or registration in a manner consistent with the public health, safety, or welfare.

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

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

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

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

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

22 14. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any
23 person to possess **marijuana** or concentrated cannabis.

24
25 COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

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

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

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.

...

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

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

19. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

FACTUAL BACKGROUND

20. For the time period including between on or about July 1, 2009 and on or about June 8, 2010, Respondent was employed as a pharmacy technician at a Safeway Pharmacy in Dublin, CA (# 1932; PHY 45718), where he had access to controlled substances and dangerous drugs.

21. On or about July 1, 2009, an automobile driven by Respondent was pulled over by the California Highway Patrol after Respondent was observed driving recklessly and at an excessive rate of speed. Respondent was detained and his vehicle was impounded.

1 22. During an inventory search of the vehicle, the officer(s) discovered a clear plastic zip-
2 loc bag containing 326 tablets of **Hydrocodone with APAP** (generic, **Norco**, or **Vicodin**). The
3 officer(s) also found 2.1 grams of **marijuana**, a pipe with **marijuana** residue, 11 pipe screens,
4 and a metal grinder for **marijuana**. Respondent admitted to the officer(s) that the tablets and the
5 **marijuana** were his. He admitted that he did not have a medical marijuana card. Respondent
6 told the officer(s) that the tablets were prescribed for back pain and that he had a prescription at
7 home. Respondent was arrested and taken into custody on suspicion of violating Vehicle Code
8 section 23103 (Reckless driving), Vehicle Code section 23222, subdivision (b) (Possession of less
9 than one ounce of **marijuana** while driving), and Business and Professions Code section 4060
10 (Possession of controlled substance without a valid prescription).

11 23. In subsequent interview(s) with Board Inspector(s), Respondent first reasserted his
12 claim that the **Hydrocodone with APAP** drug(s) found in his possession had been prescribed for
13 him. When pressed for the name of his prescribing physician, however, Respondent subsequently
14 admitted that he did not have a prescription for the **Hydrocodone with APAP** drug(s). He said
15 that he had purchased them “from a friend,” whose name Respondent declined to provide.

16 24. A subsequent audit of the Schedule III controlled substances stock of the Safeway
17 Pharmacy by which Respondent was employed (# 1932; PHY 4571 8), for the period from May
18 2009 to May 2010 could not account for the controlled substance losses of approximately 16,329
19 dosage units (tablets) of **Hydrocodone with APAP** drug(s) of the type possessed by Respondent.
20
21

22 FIRST CAUSE FOR DISCIPLINE

23 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

24 25. Respondent is subject to discipline under section 4301(f) of the Code, in that
25 Respondent, as described in paragraphs 20 to 24 above, committed acts involving moral
26 turpitude, dishonesty, fraud, deceit, or corruption.
27
28

1 SECOND CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance(s))

3 26. Respondent is subject to discipline under section 4301(h) of the Code, in that
4 Respondent, as described in paragraphs 20 to 24 above, administered one or more controlled
5 substances to himself, including **marijuana** and/or **Hydrocodone with APAP** products.
6

7 THIRD CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance(s))

9 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
11 in paragraphs 20 to 24 above, furnished to himself or another without a valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.
13

14 FOURTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance(s))

16 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11357, in that
18 Respondent, as described in paragraphs 20 to 24 above, possessed, conspired to possess, and/or
19 assisted in or abetted possession of, a controlled substance, without a prescription or unlawfully.
20

21 FIFTH CAUSE FOR DISCIPLINE

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

23 29. 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 24 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.
27
28

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

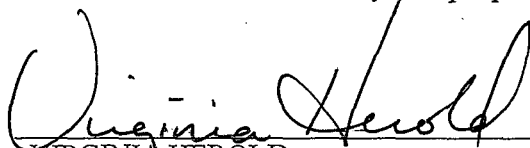
30. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 20 to 29 above, engaged in unprofessional conduct.

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 Number TCH 75222, issued to Gregory Julian Robinson II (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: 8/4/10


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

SF2010200576
20298888.doc