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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 **MARGARET B. CARPENTIERO**
P.O. Box 5423
13 Bakersfield, CA 93388
14 Pharmacy Technician Registration No.: TCH
24945
15 Respondent.

Case No. 3652

ACCUSATION

16
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 January 27, 1998, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration License No.: TCH 24945 to Margaret B. Carpentiero (Respondent). The
23 Pharmacy Technician Registration License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
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STATUTORY PROVISIONS

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2 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
3 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
4 disciplinary action during the period within which the license may be renewed, restored, reissued
5 or reinstated.

6 5. Section 4059 states:

7 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
8 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to section
9 3640.7.”

10 6. Section 4022 of the Code states:

11 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
12 humans or animals, and includes the following:

13 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
14 prescription,” “Rx only,” or words of similar import.

15 “(b) Any device that bears the statement: “Caution: federal law restricts this device to sale
16 by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be
17 filled in with the designation of the practitioner licensed to use or order use of the device.

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 7. Section 4104 of the Code states:

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22 “(c) Every pharmacy shall report to the board, within 30 days of the receipt or development
23 of the following information with regard to any licensed individual employed by or with the
24 pharmacy: (6) Any termination of a licensed individual based on theft, diversion, or self-use
25 of dangerous drugs.

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

27 “For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 9. Section 4300 provides, in pertinent part, that every license issued by the Board is
6 subject to discipline, including suspension or revocation.

7 10. Section 4301 states:

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

11

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

15

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

21

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

24

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

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

3 12. Health and Safety Code section 11171 states: "No person shall prescribe, administer,
4 or furnish a controlled substance except under the conditions and in the manner provided by this
5 division."

6 13. Health and Safety Code section 11173 states: "No person shall obtain or attempt to
7 obtain controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
8 concealment of a material fact."

9 COST RECOVERY

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

14 DANGEROUS DRUGS

15 15. The dangerous drugs stolen by Respondent are listed below:

- 16 a. "Adderall," is a brand name for a combination drug containing amphetamine and
17 dextroamphetamine, is a Schedule II controlled substance as designated by Health and
18 Safety Code section 11055, subdivision (d)(1), and Code of Federal Regulations Section
19 1308.12, subdivision (d)(1), and is categorized as a "dangerous drug," pursuant to
20 Business and Professions Code section 4022.

21 FIRST CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct – Stealing Controlled Substances)

23 16. Respondent is subject to disciplinary action under section 4301, subdivision (f) on the
24 grounds of unprofessional conduct in that she committed acts involving moral turpitude,
25 dishonesty, fraud, deceit or corruption. Specifically, between approximately July 5, 2008 through
26 January 9, 2009, the exact dates unknown, Respondent stole approximately 73 Adderall capsules,
27 a Schedule II controlled substance according to Health and Safety Code section 11055,
28

1 subdivision (d)(1), and Code of Federal Regulations Section 1308.12, subdivision (d)(1) while
2 working at Bakersfield Memorial Hospital located at 420 34th Street in Bakersfield, CA 93303.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Self Administration of a Controlled Substance)**

5 17. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
6 the grounds of unprofessional conduct for violating Health and Safety Code section 11170 in that
7 she administered to herself a controlled substance without a prescription. Specifically, between
8 approximately July 5, 2008 through January 9, 2009, the exact dates unknown, Respondent
9 administered to herself approximately 73 Adderall Capsules, a Schedule II controlled substance
10 as defined by Health and Safety Code Section 11055, subdivision (d)(1), and Code of Federal
11 Regulations Section 1308.12, subdivision (d)(1) that she obtained while working at Bakersfield
12 Memorial Hospital located at 420 34th Street in Bakersfield, CA 93303.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Possession of a Controlled Substance)**

15 18. Respondent is subject to disciplinary action under section 4301, subdivision (j) on the
16 grounds of unprofessional conduct for violating section 4060. Specifically, between
17 approximately July 5, 2008 through January 9, 2009, the exact dates unknown, Respondent was
18 in the possession of approximately 73 Adderall Capsules, a Schedule II controlled substance as
19 defined by Health and Safety Code Section 11055, subdivision (d)(1), and Code of Federal
20 Regulations Section 1308.12, subdivision (d)(1) while working at Bakersfield Memorial Hospital
21 located at 420 34th Street in Bakersfield, CA 93303. Specifically, Respondent was in possession
22 of Adderall XR 15 mg without a valid prescription, which is a violation of pharmacy law.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration License No. TCH 24945,
27 issued to Respondent Margaret B. Carpentiero;

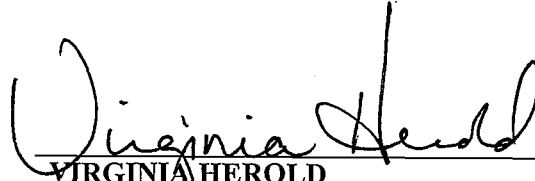
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1 2. Ordering Respondent Margaret B. Carpentiero to pay the Board the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

8/9/10



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

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