11		•
1	EDMUND G. BROWN JR.	
2	Attorney General of California 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  DEPARTMENT OF CONSUMER AFEAIRS	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:	Case No. 3666
12	TRACEY LYNNE DAVIS 1327 Grand Avenue	ų
13	Santa Rosa, CA 95404	ACCUSATION
14	Pharmacy Technician License No. TCH 13104	
	Respondent.	
15		
15 16		
	Complainant alleges:	
16	Complainant alleges:  PART	<u>IES</u>
16 17	PARTI	IES this Accusation solely in her official capacity
16 17 18	PARTI	this Accusation solely in her official capacity
16 17 18 19	PARTI  1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.	this Accusation solely in her official capacity
16 17 18 19 20	PARTI  1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.	this Accusation solely in her official capacity, Department of Consumer Affairs.  of Pharmacy issued Pharmacy Technician
16 17 18 19 20 21	PARTI  1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.  2. On or about June 13, 1994, the Board of	this Accusation solely in her official capacity, Department of Consumer Affairs. of Pharmacy issued Pharmacy Technician Respondent). The Pharmacy Technician
16 17 18 19 20 21 22	1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.  2. On or about June 13, 1994, the Board of License No. TCH 13104 to Tracey Lynne Davis (R	this Accusation solely in her official capacity, Department of Consumer Affairs. of Pharmacy issued Pharmacy Technician Respondent). The Pharmacy Technician
16 17 18 19 20 21 22 23	1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.  2. On or about June 13, 1994, the Board of License No. TCH 13104 to Tracey Lynne Davis (Rule License was in full force and effect at all times release.	this Accusation solely in her official capacity, Department of Consumer Affairs.  of Pharmacy issued Pharmacy Technician Respondent). The Pharmacy Technician evant to the charges brought herein and will
16 17 18 19 20 21 22 23 24	1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.  2. On or about June 13, 1994, the Board of License No. TCH 13104 to Tracey Lynne Davis (Rucense was in full force and effect at all times release expire on November 30, 2011, unless renewed.  JURISDIC	this Accusation solely in her official capacity, Department of Consumer Affairs.  of Pharmacy issued Pharmacy Technician Respondent). The Pharmacy Technician evant to the charges brought herein and will
16 17 18 19 20 21 22 23 24 25	1. Virginia Herold (Complainant) brings to as the Executive Officer of the Board of Pharmacy.  2. On or about June 13, 1994, the Board of License No. TCH 13104 to Tracey Lynne Davis (Rucense was in full force and effect at all times release expire on November 30, 2011, unless renewed.  JURISDIC	this Accusation solely in her official capacity, Department of Consumer Affairs.  of Pharmacy issued Pharmacy Technician Respondent). The Pharmacy Technician evant to the charges brought herein and will  CTION  Board of Pharmacy (Board), Department of

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

# STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
  - 9. California Code of Regulations, title 16, section 1770, states:

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

- 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 12. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or to have in his or her possession a drug secured by a forged prescription.
- 13. Health and Safety Code section 11150 provides, in pertinent part, that no person other than an authorized prescriber shall write or issue a prescription.

///

.27

- 14. Health and Safety Code section 11157 provides that no person shall issue a prescription that is false or fictitious in any respect.
- 15. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 16. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
- 17. Health and Safety Code section 11175 makes it unlawful for any person to obtain or possess a prescription that does not comply with the Uniform Controlled Subtances Act [Health & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant prescription, or to possess a controlled substance obtained by such a prescription.
- 18. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.
- 19. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.
- 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

# CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 21. 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."
  - 22. 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."
- 23. 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.
- 24. **Flexeril** and **Amrix** are among the brand names for **cyclobenzaprine hydrochloride**, a dangerous drug as designated by Business and Professions Code section 4022. This is a central nervous system (CNS) muscle relaxant.

## FACTUAL BACKGROUND

- 25. For approximately two (2) years from an unknown start date until in or around May 2009, Respondent was employed as an office manager by a physician in Sonoma, California. In the period(s) prior to that employment, Respondent had also been employed by other physicians.
- 26. During her employment(s), Respondent took advantage of access to these physicians' prescription pads to create fraudulent prescriptions for herself. The exact number of prescriptions created and/or controlled substances/dangerous drugs fraudulently acquired is not known, but in the period between in or around January 2008 and in or around May 2009, Respondent forged or falsely created at least forty-five (45) prescriptions for herself, including at least twenty-two (22) prescriptions for Norco, Vicodin, or other Hydrocodone-containing drugs and at least eighteen (18) prescriptions for Flexeril, Amrix, or other cyclobenzaprine-containing drugs. All of these prescriptions were created for Respondent's self-use of the fraudulently acquired drugs.

///

27. When contacted by police in or around May 2009, Respondent initially asserted that it was her son who was responsible for forging one or more of the prescriptions fraudulently created on Respondent's then-employer's prescription pad(s). She later admitted that it was her, and that she had been creating fraudulent prescriptions "for years" due to an addiction to pain medication.

## FIRST CAUSE FOR DISCIPLINE

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

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

## SECOND CAUSE FOR DISCIPLINE

(Creation/Signature of False Documents)

29. Respondent is subject to discipline under section 4301(g) of the Code in that Respondent, as described in paragraphs 25 to 27, created and/or signed documents that falsely represented the existence or nonexistence of a state of facts.

# THIRD CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance and/or Alcohol)

30. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraphs 25 to 27, administered a controlled substance to herself.

#### FOURTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

31. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of a substantially related crime, in that on or about October 29, 2009, in the criminal case *People v. Tracey Lynne Davis*, Case No. SCR-568041 in Sonoma County Superior Court, Respondent was convicted based on the conduct described in paragraphs 25 to 27 of two felony counts of violating Health and Safety Code section 11368 (Forging prescription), and two felony counts of violating Penal Code section 459 (Burglary). The conviction was entered as follows:

- a. On or about August 24, 2009, based on the conduct described in paragraphs 25 to 27, Respondent was charged by Felony Complaint in Case No. SCR-568041 with forty-five (45) counts of violating Health and Safety Code section 11368 (Forging prescription), all felonies, and forty-five (45) counts of violating Penal Code section 459 (Burglary), also all felonies.
- b. On or about October 20, 2009, Respondent pleaded no contest to two counts of violating Health and Safety Code section 11368 (Forging prescription), both felonies [enumerated counts XXXV and LXXXV] and two counts of violating Penal Code section 459 (Burglary), also both felonies [enumerated counts LXXV and XC], and was convicted of the four felonies. The remaining eighty-six (86) counts were dismissed pursuant to the plea.
- c. On or about December 2, 2009, imposition of sentence was suspended in favor of a period of formal probation of thirty-six (36) months, on terms and conditions including nine (9) months in jail, drug testing, prohibitions on use of alcohol or drugs, fines and fees.

## FIFTH CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described in paragraphs 25 to 27, furnished to herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

# SIXTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 25 to 27, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

# SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs

25 to 27, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled	
substance, by fraud, deceit, subterfuge, or concealment of material fact.	
EIGHTH CAUSE FOR DISCIPLINE	
(Making, Uttering and/or Using False or Forged Prescriptions)	
35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that	
Respondent, as described in paragraphs 25 to 27, falsely made, altered, forged, uttered, published,	
passed, or attempted to pass, a false, forged, fictitious or altered prescription for a (narcotic) drug,	
had in her possession a (narcotic) drug secured by a false, forged, fictitious or altered	
prescription, or conspired and/or assisted in or abetted any of these acts.	
NINTH CAUSE FOR DISCIPLINE	
(Issuance and/or Use of Invalid Prescription(s))	
36. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,	
and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in	
paragraphs 25 to 27, issued prescriptions without authority to do so, obtained or possessed an	
invalid prescription, obtained or possessed a controlled substance by means of such invalid	
prescription, or conspired and/or assisted in or abetted any of these acts.	
TENTH CAUSE FOR DISCIPLINE	
(Unprofessional Conduct)	
37. Respondent is subject to discipline under section 4301 of the Code in that	
Respondent, as described in paragraphs 25 to 36, engaged in unprofessional conduct.	
///	
///	
///	
///	
///	
///	
///	

--9

## **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 13104, issued to Tracey Lynne Davis (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.

VIRGINIA HEROI

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

SF2010200584 20333179.doc

DATED: