1 2 3 4 5 6 7 8 9 10	BOARD OF DEPARTMENT OF C	RE THE PHARMACY CONSUMER AFFAIRS CALIFORNIA	
11		Case No. 3730	
12	In the Matter of the Accusation Against:		
13	CLARA DIANE DOWNEY 3046 Oceanside Blvd.	ACCUSATION	
14	Oceanside, CA 92054		
15	Pharmacy Technician Registration No. TCH 3748		
16	Respondent.		
17			
18	Com bi out llocar		
19	Complainant alleges:		
20		<u>TIES</u>	
21		s this Accusation solely in her official capacity	
22		as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
23		oard of Pharmacy issued Pharmacy Technician	
24	Registration Number TCH 3748 to Clara Diane		
25	Technician Registration was in full force and eff		
26	herein and will expire on September 30, 2010, un	nless renewed.	
27			
28			
		1 Accusation	

ļ		
1	JURISDICTION	
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
3	Consumer Affairs, under the authority of the following laws. All section references are to the	
4	Business and Professions Code unless otherwise indicated.	
5	4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,	
6	surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a	
7	disciplinary action during the period within which the license may be renewed, restored, reissued	
8	or reinstated.	
9	5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license	
10	issued may be suspended or revoked."	
11	STATUTORY PROVISIONS	
12	6. Section 482 of the Code states:	
13	Each board under the provisions of this code shall develop criteria to	
14	evaluate the rehabilitation of a person when:	
15	(a) Considering the denial of a license by the board under Section 480; or	
16	(b) Considering suspension or revocation of a license under Section 490.	
17	•	
18	furnished by the applicant or licensee.	;
19	7. Section 490 of the Code provides, in pertinent part, that a board may suspend or	
20	revoke a license on the ground that the licensee has been convicted of a crime substantially	
21	related to the qualifications, functions, or duties of the business or profession for which the	
22	license was issued.	ļ
23	8. Section 493 of the Code states:	
24	Notwithstanding any other provision of law, in a proceeding conducted by a	
25	board within the department pursuant to law to deny an application for a license or	
26	to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has	
27	been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be	
28	conclusive evidence of the fact that the conviction occurred, but only of that fact,	
	2	
	Accusation	m

•	
1	and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is
2	substantially related to the qualifications, functions, and duties of the licensee in question.
3	As used in this section, "license" includes "certificate," "permit,"
4	"authority," and "registration."
5	9. Section 4059 of the Code provides in part that a person may not furnish any
6	dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
7	veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8	dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9	veterinarian, or naturopathic doctor pursuant to Section 3640.7.
10	10. Section 4060 of the Code states:
11	No person shall possess any controlled substance, except that furnished to a
12	person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
13	pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
14	pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
15	pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
16	section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
17	optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
18	with the name and address of the supplier or producer.
19	Nothing in this section authorizes a certified nurse-midwife, a nurse
20	practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.
21	
22	11. Section 4301 of the Code states:
23	The board shall take action against any holder of a license who is guilty of
24	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but
25	is not limited to, any of the following:
26	(f) The commission of any act involving moral turpitude, dishonesty, fraud,
27	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.
28	·····
	3

Accusation

(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, or any other state, or of the United States regulating controlled substances and dangerous drugs.

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(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.

25 26

27

28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

. . . .

. . . .

. . . .

12. Health and Safety Code section 11170 provides that no person shall prescribe,

administer, or furnish a controlled substance for himself.

1	13. Health and Safety Code section 11173(a) provides that no person shall obtain or	
2	attempt to obtain controlled substances, or procure or attempt to procure the administration of or	
3	prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or	
4	(2) by the concealment of a material fact.	
5	14. Health and Safety Code section 11350 provides that every person who possesses a	
6	controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or	
7	veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state	
8	prison.	
9	REGULATORY PROVISIONS	
10	15. California Code of Regulations, title 16, section 1770, states:	
11	For the purpose of denial, suspension, or revocation of a personal or facility	
12	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	
13	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	
14	perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.	
15	consistent with the public health, safety, or wenare.	
16	16. California Code of Regulations, title 16, section 1769, states:	
17		
18	(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been	
19	convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:	
20	 (1) Nature and severity of the act(s) or offense(s). 	
21	(2) Total criminal record.	
22	(3) The time that has elapsed since commission of the act(s) or offense(s).	
23	(4) Whether the licensee has complied with all terms of parole, probation,	
24	restitution or any other sanctions lawfully imposed against the licensee.	
25	(5) Evidence, if any, of rehabilitation submitted by the licensee.	
26		
27		
28		
	5	

1	
1	COST RECOVERY
2	17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3	administrative law judge to direct a licentiate found to have committed a violation or violations of
4	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5	enforcement of the case.
6	DRUGS
7	18. Zolpidem tartarate, sold under the brand names Ambien, Edluar, and Zolpimist, is a
8	Schedule IV controlled substance as designated by Health and Safety Code section 11507(d)(32),
9	and is a dangerous drug pursuant to Business & Professions Code section 4022.
10	19. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,
11	Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
12	Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
13	and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone
14	is used as a narcotic analgesic in the relief of pain.
15	FIRST CAUSE FOR DISCIPLINE
16	(April 20, 2009 Conviction for Possession of Hydrocodone)
17	20. Respondent is subject to disciplinary action under sections 490 and 4301(l) in that she
18	was convicted of a crime that is substantially related to the qualifications, functions, and duties of
19	a pharmacy technician. The circumstances are as follows:
20	a. On or about April 20, 2009 in a criminal proceeding entitled <i>People of the</i>
21	State of California v. Clara Diane Downey, in the San Diego Superior Court case number
22	CN259062, Respondent was convicted of violation of Health and Safety Code section 11350(a),
_ 23	possession of a controlled substance, hydrocodone.
24	b. The facts that led to the conviction are that Respondent was employed as a
25	pharmacy technician at CVS Pharmacy in Oceanside, California from October 1987 to March
. 26	2009. On March 9, 2009, the store manager at CVS witnessed Respondent take a prescription
27	stock bottle off a shelf, open it, and pour some pills into her smock. The store manager then
28	performed a "smock check" and discovered numerous pills in Respondent's smock pocket. The
	6 Accusation
	Accusation

store manager then requested that Respondent empty her purse, which was located in a locker in the breakroom. When Respondent's purse was emptied, more pills were found. Both pill discoveries were witnessed by the pharmacist and another pharmacy technician.

c The CVS loss prevention manager interviewed Respondent in the presence
of the store manager. During the interview, Respondent admitted to taking Ambien pills from the
pharmacy without payment. Respondent stated that she had been taking the pills for "around one
year." Respondent admitted that she took an average of about 10 pills each time and that the
thefts occurred about 50 times in the past year. Respondent also admitted that she took 450
tablets of Ambien 10 mg and 50 tablets of Ambien 5 mg. However, Respondent stated that the 22
Vicodin ES tablets (hydrocodone/APAP) found in her purse were provided to her by her dentist.

d. Respondent signed a statement wherein she admitted to taking "Ambien 11 CR, Zolpidem 10 mg and Ambien 5 mg" for insomnia. Respondent stated that the last time she 12 had taken the drugs was "about 1 month ago and today," and about 50 times in the past year. 13 Respondent also admitted in her written statement that she took about 500 pills from CVS 14 without payment by placing the stock bottles in her purse. Respondent also signed a promissory 15 note and notice of civil demand for \$826.58. The loss prevention manager then called the 16 Department of Justice, Bureau of Narcotic Enforcement. A Special Agent with the Bureau 17 identified and booked into evidence the 22 tablets of Vicodin 7.5/500 mg, 8 tablets of Ambien 5 18 mg, 61 tablets of zolpidem tartrate 5 mg, and 49 tablets of Ambien 10 mg. Respondent was 19 subsequently arrested and charged with violation of Penal Code section 460(b), second degree 20 burglary and violation of Health and Safety Code section 11350(a), possession of a controlled 21 substance. 22

e. As a result of her conviction, Respondent was sentenced to 3 days in
custody, ordered to pay all fines, fees and restitution, required to participate and complete a drug
treatment program pursuant to Penal Code section 1210, with the imposition of the sentence
suspended for 3 years.

7

27

1

2

1	SECOND CAUSE FOR DISCIPLINE	
2	(Unprofessional Conduct – Dishonesty and Deceit)	
3	21. Respondent is subject to disciplinary action for unprofessional conduct under section	
4	4301(f) of the Code in that Respondent's theft from CVS Pharmacy constitute dishonesty and	
5	deceit, as is detailed in paragraph 20, incorporated herein by reference.	
6	THIRD CAUSE FOR DISCIPLINE	
7	(Unprofessional Conduct – Self-Administration of a Controlled Substance)	
8	22. Respondent is subject to disciplinary action for unprofessional conduct under section	
9	4301(h) of the Code in that she illegally administered a controlled substance to herself, as is set	
10	forth in paragraph 20, incorporated herein by reference.	
11	FOURTH CAUSE FOR DISCIPLINE	
12	(Unprofessional Conduct – Violating Laws Regulating Controlled Substances)	
13	23. Respondent is subject to disciplinary action for unprofessional conduct under section	
14	4301(j) of the Code in that she violated California Health and Safety Code sections 11173(a),	
15	11170, and 11350(a), as is set forth in paragraph 20, incorporated herein by reference.	
16	FIFTH CAUSE FOR DISCIPLINE	
17	(Unprofessional Conduct – Violation of Chapter)	
18	24. Respondent is subject to disciplinary action for unprofessional conduct under section	
19	4301(0) of the Code in that she violated the Pharmacy Act by furnishing a dangerous drug to	
20	herself in violation of Code section 4059 and illegally possessing a controlled substance in	
21	violation of Code section 4060, as evidenced by her admissions as is set forth in paragraph 20	
22	above, incorporated herein by reference.	
23	PRAYER	
24	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
25	and that following the hearing, the Board of Pharmacy issue a decision:	
26	1. Revoking or suspending Pharmacy Technician Registration Number TCH 3748,	
27	issued to Clara Diane Downey;	
28		
	8	
[Accusation	

~

Ordering Clara Diane Downey to pay the Board of Pharmacy the reasonable costs of 2. 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/. 7/1/10 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2010701045 70289730.doc

Accusation