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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 **MARCELLA DALE PARIC**
13 1770 Frambuesa Drive
14 San Luis Obispo, CA 93405
15 Original Pharmacist License No. RPH 60941
16 Respondent.

Case No. 3798

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about May 3, 2008, the Board of Pharmacy (Board) issued Original Pharmacist
23 License No. RPH 60941 to Marcella Dale Paric (Respondent). The Original Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 November 30, 2013, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender,
3 cancellation of a license shall not deprive the Board to proceed with a disciplinary action during
4 the period within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 provides, in pertinent part:

6 "(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
9 or profession for which the license was issued.

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code."

20 6. Section 4060 provides, in pertinent part:

21 "No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
24 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."

28 7. Section 4300 provides, in pertinent part, that every license issued by the Board is

1 subject to discipline, including suspension or revocation.

2 8. Section 4301 provides, in pertinent part:

3 "The board shall take action against any holder of a license who is guilty of unprofessional
4 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

5 Unprofessional conduct shall include, but is not limited to, any of the following:

6

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

10

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

16

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

19

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment."

9

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

14 9. Health and Safety Code section 11550, subdivision (a) states, in pertinent part:

15 "No person shall use, or be under the influence of any controlled substance which is (1)
16 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
17 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
18 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
19 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
20 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
21 by the state to dispense, prescribe, or administer controlled substances."

22 REGULATORY PROVISIONS

23 10. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

1 consistent with the public health, safety, or welfare."

2 **COST RECOVERY**

3 11. Section 125.3 provides, in pertinent part, that the Board may request the
4 administrative law judge to direct a licentiate found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 **DANGEROUS DRUG/CONTROLLED SUBSTANCES**

8 12. "Hydromet," is a Schedule III controlled substance pursuant to Health and Safety
9 Code section 11056(e), and is a dangerous drug within the meaning of Business and Professions
10 Code section 4022.

11 13. "Tussionex," a brand name for hydrocodone polistirex 10mg./5ml., is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056(e)4) and is
13 categorized as a dangerous drug pursuant to section 4022 of the Code.

14 14. "Phentermine," (brand name Adipex-P) is a Scheduled IV controlled substance as
15 designated by Health and Safety Code section 11057(d) and is categorized as a dangerous drug
16 pursuant to section 4022 of the Code.

17 15. "Soma," a brand name for carisoprodol, is a dangerous drug according to Business
18 and Professions Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially-Related Crime)**

21 16. Respondent is subject to disciplinary action under sections 490, and 4301, subdivision
22 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that on or around
23 September 15, 2010, Respondent pled *nolo contendere* to one misdemeanor count of violating
24 Penal Code section 484, subdivision (a) (Petty Theft) in a criminal proceeding entitled *The People*
25 *of the State of California v. Marcella Dale Paric aka Marcella Dale Von Gortler aka Marcella*
26 *Dale Vongortler aka Marcella Daric aka Marcella Dale Vangortler* (Super. Ct. Santa Barbara
27 County, 2009, No. 1348306). The circumstances surrounding the conviction are that on or
28 around April 22, 2010, Respondent was observed via recorded video footage consuming

1 Hydromet Syrup while working as a pharmacist at Von's Store Pharmacy. During the course of a
2 subsequent interview by loss prevention personnel, Respondent admitted that she had taken and
3 consumed medications from various Von's Store pharmacies on several other occasions as well,
4 including Tussionex, Phentermine, and Soma.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unlawful Self-Administration of Controlled Substances)**

7 17. Respondent is subject to disciplinary action under section 4301, subdivision (h) and
8 Health and Safety Code section 11170 in that she furnished and administered controlled
9 substances to herself while working as pharmacist at Von's Store Pharmacy. Complainant refers
10 to, and by this reference incorporates, the allegations set forth above in paragraph 16, as though
11 set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unlawful Possession of Controlled Substances)**

14 18. Respondent is subject to disciplinary action under sections 4300, and 4301,
15 subdivisions (j) and (o) in conjunction with section 4060, in that Respondent unlawfully
16 possessed controlled substances while working as a pharmacist at Von's Store Pharmacy.
17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraph 16, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Theft of Controlled Substances)**

21 19. Respondent is subject to disciplinary action under sections 4300 and 4301,
22 subdivision (f), in that Respondent committed acts of moral turpitude and/or dishonest when she
23 stole narcotic substances from her employer, Von's Store Pharmacy. Complainant refers to, and
24 by this reference incorporates, the allegations set forth above in paragraph 16 as though set forth
25 fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Furnishing Dangerous Drugs Without a Prescription)**

3 20. Respondent is subject to disciplinary action under sections 4300, and 4301,
4 subdivision (j), in conjunction with section 4059, subdivision (a) in that Respondent furnished
5 drugs to herself without a prescription while employed as a pharmacist at Von's Store Pharmacy.
6 Complainant refers to, and by this reference incorporates, the allegations set forth above in
7 paragraph 16 as though set forth fully.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Practicing Pharmacy While Impaired)**

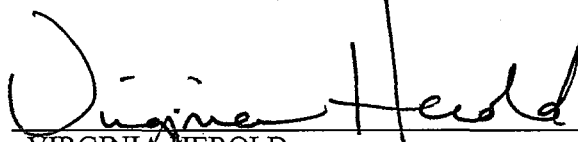
10 21. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (o), in conjunction with section 4327 in that Respondent practiced pharmacy after
12 consuming a controlled substance. Complainant refers to, and by this reference incorporates, the
13 allegations set forth above in paragraph 16 as though set forth fully.

14 **PRAYER**

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

- 17 1. Revoking or suspending Original Pharmacist License Number RPH 60941, issued to
18 Marcella Dale Paric;
- 19 2. Ordering Marcella Dale Paric to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 5/25/12



25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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