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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:

Case No. 3827

12 **WILBUR LON WHEELER**
8166 Center Parkway #32
13 Sacramento, California 95823
Pharmacy Technician License No. TCH 41397

A C C U S A T I O N

14 Respondent.

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17 Complainant alleges:

18 PARTIES

19 1. Virginia K. Herold ("Complainant") brings this Amended Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of
21 Consumer Affairs.

22 2. On or about February 8, 2002, the Board issued Pharmacy Technician Registration
23 No. TCH 41397 to Respondent Wilbur Lon Wheeler. The license was in full force and effect at
24 all times relevant to the charges brought herein and will expire on September 30, 2011, unless
25 renewed.

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STATUTORY PROVISIONS

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2 3. Under Business & Professions Code section 4300, the Board may discipline any
3 license, for any reason provided in the Pharmacy Law (i.e., Business & Professions Code sections
4 4000 et. seq.).

5 4. Business & Professions Code section 4301 states, in pertinent part:
6 “The board shall take action against any holder of a license who is guilty of unprofessional
7 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
8 Unprofessional conduct shall include, but is not limited to, any of the following:

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10 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
11 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
12 whether the act is a felony or misdemeanor.

13 (j) The violation of any of the statutes of this state or of the United States regulating
14 controlled substances and dangerous drugs.

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16 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
17 the violation of or conspiring to violate any provision or term of this chapter or of the applicable
18 federal and state laws and regulations governing pharmacy, including regulations established by
19 the board.

20 ...”

21 5. Business & Professions Code section 4060 provides, in pertinent part, that “no person
22 shall possess any controlled substance, except that furnished to a person upon the prescription of
23 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor...”

24 6. Business & Professions Code section 4059, subdivision (a), provides, in pertinent
25 part, that “a person may not furnish any dangerous drug, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
27 3640.7.”

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1 7. Health & Safety Code section 11352, subdivision (a), prohibits the transportation,
2 importation, sale, furnishing, administration or giving away of controlled substances classified in
3 Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a
4 physician, dentist, podiatrist or veterinarian licensed to practice in the State of California.

5 8. Health & Safety Code section 11350, subdivision (a), provides in pertinent part that
6 "...every person who possesses...(2) any controlled substance classified in Schedule III, IV, or V
7 which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
8 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
9 prison".

10 9. Health & Safety Code section 11173, subdivision (a) provides that "no person shall
11 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
12 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
13 or subterfuge; or (2) by the concealment of a material fact".

14 10. Business & Professions Code section 118 (b), states: The suspension, expiration, or
15 forfeiture by operation of law of a license issued by a board in the department, or its suspension,
16 forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender
17 without the written consent of the board, shall not, during any period in which it may be renewed,
18 restored, reissued, or reinstated, deprive the board of its authority to institute or continue a
19 disciplinary proceeding against the licensee upon any ground provided by law or to enter an order
20 suspending or revoking the license or otherwise taking disciplinary action against the licensee on
21 any such ground.

22 11. Business & Professions Code section 125.3 states, in pertinent part, that the Board
23 may request the administrative law judge to direct a licensee found to have committed a
24 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
25 investigation and enforcement of the case.

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CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

12. Hydrocodone with acetaminophen is a dangerous drug, a narcotic drug and a Schedule III controlled substance as designated by Health & Safety Code section 11056 (e)(4). Hydrocodone with acetaminophen is dispensed as HC/AP 5/500 mg tablets and also as HC/AP 10/325 mg tablets.

13. At all relevant times from and after August 6, 2007, Respondent Wilbur Lon Wheeler was employed as a pharmacy technician by Respondent Bel Air Pharmacy # 510, 1540 West El Camino, Sacramento, California 95833.

14. During the period of time of from in or about March 2009 through on or about January 21, 2010, Respondent stole approximately 2,000 HC/AP 5/500 mg tablets from the inventory of Bel Air Pharmacy #510 from time to time during the performance of his duties as a pharmacy technician employed by Bel Air Pharmacy #510. Respondent sold, distributed or otherwise furnished all or some portion of said HC/AP 5/500 mg tablets to others.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Drug Laws)

15. Paragraphs 1 through 14 above are incorporated by reference. Respondent is subject to disciplinary action under Business & Professions Code sections 4301(j) and 4301(o), because he violated California statutes regulating controlled substances and dangerous drugs, as follows:

(a) Business and Professions Code section 4059(a) and Health & Safety Code section 11352(a) by furnishing HC/AP 5/500 mg tablets, a controlled substance and dangerous drug, to himself and to others without a prescription;

(b) Business and Professions Code section 4060 and Health & Safety Code section 11350(a) by possessing HC/AP 5/500 mg tablets without a prescription; and

(c) Health and Safety Code section 11173 by obtaining HC/AP 5/500 tablets by fraud, deceit, misrepresentation, or subterfuge.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Acts of Moral Turpitude, Dishonesty and Fraud)

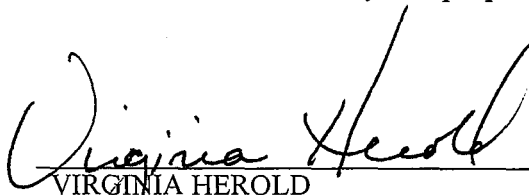
16. Paragraphs 1 through 14 above are incorporated by reference. Respondent is subject to disciplinary action under Business & Professions Code section 4301(f) in that he committed acts of moral turpitude, dishonesty, fraud, deceit, or corruption. As alleged in Paragraph 14, from time to time during the period of from in or about March 2009 through on or about January 21, 2010, while working as a pharmacy technician for employer Bel Air Pharmacy #510, Respondent stole approximately 2,000 HC/AP 5/500 mg tablets from the inventory of Bel Air Pharmacy #510. Respondent sold, distributed or otherwise furnished all or some portion of the HC/AP 5/500 mg tablets to others.

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 41397 issued to Respondent Wilbur Lon Wheeler;
2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/30/10



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

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