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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3849

13 **LYNDA J. BUDMAN**
641 Balsa Drive
Castle Rock, CO 80104

ACCUSATION

14 Original Pharmacist License No. RPH 52444

15 Respondent.

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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 March 29, 2001, the Board of Pharmacy issued Pharmacist License
23 Number RPH 52444 to Lynda J. Budman (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on September
25 30, 2010, unless renewed.

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

11 (n) The revocation, suspension, or other discipline by another state of a
12 license to practice pharmacy, operate a pharmacy, or do any other act for which a
13 license is required by this chapter.

14 7. Section 4060 of the Code states, in pertinent part:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
18 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
19 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
20 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
21 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
23 shall not apply to the possession of any controlled substance by a manufacturer,
24 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
25 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
26 physician assistant, when in stock in containers correctly labeled with the name and
27 address of the supplier or producer.

28 8. Health and Safety code section 11170 states that no person shall prescribe, administer,
or furnish a controlled substance for herself.

9. Health and Safety Code section 11173 provides, in pertinent part:

(a) 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.

(b) No person shall make a false statement in any prescription, order, report,
or record, required by this division.

CONTROLLED SUBSTANCES

10. **Hydrocodone bitartrate** is a Schedule III controlled substance as designated by
Health and Safety Code section 11056, subdivision (e)(4).

11. **Lortab, Norco, and Vicodin** are combination drugs containing hydrocodone
bitartrate and acetaminophen and each is a Schedule III controlled substance as designated by
Health and Safety Code section 11056, subdivision (e)(4).

1 12. **Marijuana** is a Schedule I controlled substance as designated in Health and Safety
2 Code section 11054, subdivision (d)(13).

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Out of State Discipline)

10 14. Respondent is subject to disciplinary action under section Code section 4301,
11 subdivision (n), on the grounds of unprofessional conduct in that on or about September 26, 2007,
12 in the case titled *In the Matter of Disciplinary Proceedings Regarding the License to Practice*
13 *Pharmacy in the State of Colorado of Lynda Jo Budman, R.PH., License No. 15314, Respondent,*
14 *Case Nos. 2006-4032, 2007-787, and 2007-2765, the State Board of Pharmacy, State of Colorado*
15 *(Colorado Board), Respondent's Colorado Pharmacist License No. 15314 was placed on five*
16 *years probation. A true and correct copy of the Colorado Board's disciplinary decision is*
17 *attached hereto, marked Exhibit A, and incorporated herein by this reference. The circumstances*
18 *are as follows:*

19 a. On or about March 16, 2006, Respondent left the building of her employer,
20 Safeway Pharmacy #1548, 9229 East Lincoln Avenue, Littleton, Colorado, 80124, to go across
21 the parking lot to get lunch at a fast food outlet. During her absence, Respondent left a pharmacy
22 technician in charge of the pharmacy and no other pharmacist was present.

23 b. On or around November 1, 2006, through on or about March 20, 2007,
24 Respondent, while employed as a pharmacist at Walgreen's Store #6987, 355 So. Wilcox, Castle
25 Rock, Colorado, 80104, diverted controlled substances, that is Vicodin, Lortab, Norco and
26 hydrocodone, for her own use.

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1 c. On or about March 20, 2007, Respondent was arrested by the Castle Rock
2 Police, and was subsequently charged with felony theft and unlawful possession of controlled
3 substances.

4 d. Respondent entered into a Stipulation and Final Agency Order with the
5 Colorado Board whereby she agreed to, among other things: license probation for five years;
6 contract with Peer Assistance Services (PAS) for a minimum period of five years or until
7 successful completion of the Board's probationary terms and conditions, whichever occurs later;
8 submit to urine/blood screens during participation in PAS; restricted practice to not serve as a
9 manager, supervisor, preceptor or consultant pharmacist in Colorado at any time during
10 probation; take and pass the jurisprudence examination within one year of the effective date of the
11 Final Agency Order; enroll in, complete, and receive a passing grade in 90 hours of ACPE-
12 approved continuing education; disclose and provide a copy of the Final Agency Order to her
13 employer(s) during probation; submit written reports and quarterly status reports; pay her own
14 fees and costs associated with the Final Agency Order.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Conviction of Crime)

17 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
18 on the grounds of unprofessional conduct in that on or about October 10, 2007, Respondent was
19 convicted in the case titled *People of the State of Colorado v. Lynda Budman*, District Court,
20 Douglas County, Colorado, Case No. 07CR338, on her guilty plea to the added count of
21 possessing eight ounces of Marijuana [Schedule I controlled substance], a misdemeanor. The
22 crime substantially relates to the qualifications, functions, and duties of a licensed pharmacist.
23 The original criminal complaint against Respondent charged her with violation of Colorado
24 Criminal Code sections 18-18-405(1) and (2)(a)(l)(A) [possession of schedule 2 controlled
25 substances] and 18-4-401(1) and (2)(c) [theft in the amount of \$500 - \$15,000.00]. The
26 circumstances are as follows:

27 a. In and between November 1, 2006, and March 19, 2007, on numerous
28 occasions while working as a licensed pharmacist for Walgreens #6987, 355 So. Wilcox, Castle

1 Rock, Colorado, Respondent admittedly diverted the controlled substance Norco and its generic
2 (hydrocodone) from her employer, for her own use. In her handwritten statement, Respondent
3 admitted to printing a duplicate label of any prescription recently filled, pretended to scan and
4 weigh it, pretended to scan and check it, and then bagged it. She admittedly made sure the
5 prescription was something already sold so the patient would not pick it up, rather than pick it up
6 for herself. Respondent admitted that the filled prescription, described above, would be placed in
7 the "MD call back" drawers so it could not be given to a patient. She also admitted that she
8 would return the filled bottle of Norco to the shelf by the pharmacy's back door, and she would
9 grab the bottle and pocket it on her way out. In the store's bathroom, she put the filled bottle of
10 Norco in her own pocket and for her own use. Respondent believed she had diverted
11 approximately 1,800 Norco and hydrocodone tablets. Respondent prepared her handwritten
12 statement, dated and signed on March 19, 2007, admitting to the facts set forth hereinabove.

13 b. Walgreens CCTV captured Respondent removing the controlled substances
14 from the shelf when no prescriptions had been filled. Walgreens conducted an investigation,
15 interviewed Respondent where she made the above admissions and wrote her statement, and
16 turned over the case to the Castle Rock PD for arrest and prosecution.

17 c. Respondent's employer confirmed that her theft of the Norco and hydrocodone
18 totaled approximately 2,112 tablets and estimated the loss to Walgreens of \$1,978.21.
19 Respondent agreed to reimburse Walgreens the amount of \$1,978.21.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Committed Act Involving Moral Turpitude, Dishonesty,
22 Fraud, Deceit, or Corruption)

23 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
24 on the grounds of unprofessional conduct in that Respondent committed acts involving moral
25 turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are set forth in paragraph
26 15, subparagraphs a through c, above, incorporated herein by this reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (False Representation of a State of Facts)

3 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
4 on the grounds of unprofessional conduct in that Respondent knowingly made or signed a
5 certificate or document falsely representing the existence or non-existence of a state of facts in
6 relation to the false prescription labels she created for controlled substances, as set forth in
7 paragraph 16, subparagraph a, above, incorporated herein by this reference.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Self-Administration of Controlled Substance)

10 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
11 on the grounds of unprofessional conduct in that Respondent self-administered controlled
12 substances to the extent or in a manner as to be dangerous or injurious to herself, other persons or
13 the public, or to the extent the use impaired her ability to conduct with safety to the public the
14 practice of pharmacy. The circumstances are set forth in paragraph 15, subparagraph a, above,
15 incorporated herein by this reference.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Violation of Laws Regulating Controlled Substances)

18 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
19 on the grounds of unprofessional conduct in that Respondent violated laws regulating controlled
20 substances and dangerous drugs. The circumstances are as follows:

21 a. On or about March 19 and 20, 2007, Respondent possessed controlled
22 substances Lortab, Norco, Vicodin, and hydrocodone tablets without a prescription in violation of
23 Code section 4060.

24 b. In and between November 1, 2006, and March 20, 2007, Respondent self-
25 administered and self-furnished controlled substances in violation of Health and Safety Code
26 section 11170.

27 c. In and between November 1, 2006, and March 20, 2007, Respondent obtained,
28 attempted to obtain, procured or attempted to procure the administration of or prescription of

1 controlled substances by fraud, deceit, subterfuge, or misrepresentation, or by the concealment of
2 a material fact, in violation of Health and Safety Code section 11173, subdivision (a).

3 d. In and between November 1, 2006, and March 20, 2007, Respondent made a
4 false statement in a prescription, order, report, or record relating to controlled substances in
5 violation of Health and Safety Code section 11173, subdivision (b).

6 **PRAYER**

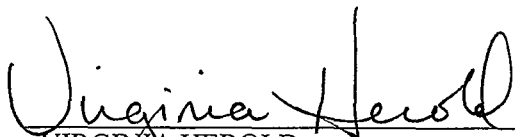
7 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 a. Revoking or suspending Pharmacist License Number RPH 52444, issued to Lynda J.
10 Budman

11 b. Ordering Lynda J. Budman to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

14 c. Taking such other and further action as deemed necessary and proper.

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16 DATED: 11/5/10



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

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