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

11  
12 In the Matter of the Accusation Against:

13 **MARK JON ELIX**  
14 **29609 Deal Court**  
**Temecula, CA 92591**

15 **Pharmacy Technician Registration No. TCH**  
16 **71805**

17 Respondent.

Case No. 3935

**A C C U S A T I O N**

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 8, 2006, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 71805 to Mark Jon Elix (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on December 31, 2011, unless renewed.

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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 4059 of the Code provides in part that a person may not furnish any  
13 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17 7. Section 4060 of the Code states:

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

Nothing in this section authorizes a certified nurse-midwife, a nurse  
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
stock of dangerous drugs and devices.

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8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not 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.

....

(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.

....

(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.

....

9. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

10. Health and Safety Code section 11173(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.

**COST RECOVERY**

11. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 DRUG

2 12. Norco, a brand name for hydrocodone with acetaminophen, is a dangerous drug  
3 pursuant to section 4022, and a Schedule III controlled substance as designated by Health and  
4 Safety Code section 11056(e)(4).

5 FACTUAL ALLEGATIONS

6 13. Respondent was employed as a pharmacy technician at Prescription Solutions  
7 located in Carlsbad, California. As part of his duties, Respondent had privileged access to  
8 Prescription Solutions' controlled substances vault, for Automated Processing System (APS)  
9 duties, which included processing of all the new and outgoing drugs in the system, physical  
10 inventory, and Return to Stock (RTS) drugs to stock.

11 14. On October 1, 2009, Respondent was not assigned to APS/RTS duties. At  
12 approximately 5:30 a.m. on October 1, 2009, an eyewitness observed Respondent in the narcotics  
13 vault, taking tablets of controlled substances from a stock bottle and concealing it in his pants.  
14 The incident was reported and an internal investigation ensued. The pharmacist-in-charge  
15 interviewed Respondent later that day. Respondent denied taking the lid off of the controlled  
16 substance container, denied pouring it into his hand and denied putting any medication into his  
17 pocket. The pharmacist-in-charge concluded that Respondent disguised his activities from fellow  
18 technicians and pharmacists by pretending to check stock while simultaneously pouring  
19 medication into his hand and putting it in his pocket.

20 15. Video surveillance captured Respondent taking the tablets of controlled substances  
21 on the following dates and times: August 10, 2009 at 6:04 a.m.; August 28, 2009 at 8:12 a.m.;  
22 September 3, 2009 at 5:33 a.m.; September 4, 2009 at 5:43 a.m.; September 11, 2009 at 12:16  
23 p.m.; September 14, 2009 at 5:38 a.m.; September 14, 2009 at 9:13 a.m.; September 15, 2009 at  
24 10:31 a.m.; September 16, 2009 at 6:52 a.m.; September 16, 2009 at 11:51 a.m.; September 17,  
25 2009 at 5:44 a.m.; September 18, 2009 at 7:00 a.m.; September 18, 2009 at 12:09 a.m.;  
26 September 21, 2009 at 5:31 a.m.; September 23, 2009 at 5:50 a.m.; September 24, 2009 at 6:08  
27 a.m.; September 25, 2009 at 6:03 a.m.; September 30, 2009 at 5:34 a.m.; and October 1, 2009 at  
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1 5:33 a.m. Hydrocodone/APAP 10/325 mg was stored in the area where Respondent was captured  
2 taking controlled substances.

3 16. On October 1, 2009, Respondent was suspended from his employment at Prescription  
4 Solutions. Respondent was subsequently terminated on October 5, 2009. Thereafter, the  
5 pharmacist-in-charge reviewed each and every purchase of hydrocodone/APAP and determined a  
6 loss of 3,786 tablets of hydrocodone/APAP.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct – Dishonesty and Deceit)

9 17. Respondent is subject to disciplinary action for unprofessional conduct under section  
10 4301(f) of the Code in that Respondent's theft detailed in paragraphs 13-16, incorporated herein  
11 by reference, constitutes dishonesty and deceit.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – Violation of Chapter)

14 18. Respondent is subject to disciplinary action for unprofessional conduct under section  
15 4301(o) of the Code in that he violated the Pharmacy Act by furnishing dangerous drugs to  
16 himself in violation of Code section 4059, and illegally possessing controlled substances in  
17 violation of Code section 4060, and by violating Health and Safety Code section 11173, as  
18 detailed in paragraphs 13-16 above, incorporated herein by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

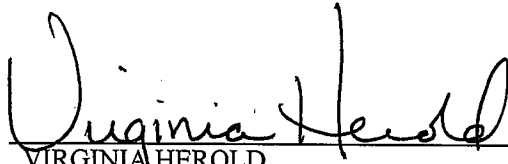
21 19. Respondent is subject to disciplinary action for unprofessional conduct under section  
22 4301(j) of the Code in that he violated the California Uniform Controlled Substances Act (Health  
23 and Safety Code Sections 11000, et. seq.), as set forth in paragraphs 13-16 above, incorporated  
24 herein by reference.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Board of Pharmacy issue a decision:  
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- 1           1.    Revoking or suspending Pharmacy Technician Registration Number TCH 71805,  
2 issued to Mark Jon Elix;  
3           2.    Ordering Mark Jon Elix to pay the Board of Pharmacy the reasonable costs of the  
4 investigation and enforcement of this case, pursuant to Business and Professions Code section  
5 125.3;  
6           3.    Taking such other and further action as deemed necessary and proper.

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9 DATED: 2/25/11



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

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