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

11 In the Matter of the Accusation Against:

Case No. 3973

12
13 ROSALIE KATHERINE WALKER
2107 E. Chapman Ave.
14 Fullerton, CA 92831

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH 78028,
16 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 August 23, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 78028 to Rosalie Katherine Walker (Respondent). The license was in
24 full force and effect at all times relevant to the charges brought herein, and will expire on July 31,
25 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

". . . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code states:

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

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section

1 establishes an independent basis for a board to impose discipline upon a licensee, and that the
2 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
3 constitute a change to, but rather are declaratory of, existing law."

4 8. Section 493 of the Code states:

5 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
6 the department pursuant to law to deny an application for a license or to suspend or revoke a
7 license or otherwise take disciplinary action against a person who holds a license, upon the
8 ground that the applicant or the licensee has been convicted of a crime substantially related to the
9 qualifications, functions, and duties of the licensee in question, the record of conviction of the
10 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
11 and the board may inquire into the circumstances surrounding the commission of the crime in
12 order to fix the degree of discipline or to determine if the conviction is substantially related to the
13 qualifications, functions, and duties of the licensee in question.

14 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
15 'registration.'"

16 9. Section 4301 of the Code states:

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

20 ". . . .

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

24 ". . . .

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

27 ". . . .
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1 "(I) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

18 ". . . . "

19 10. Section 4060 of the Code states:

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

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer.

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

6 11. Health and Safety Code section 11350, subdivision (a), states:

7 "Except as otherwise provided in this division, every person who possesses (1) any
8 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
9 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
10 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
11 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
12 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
13 licensed to practice in this state, shall be punished by imprisonment in the state prison."

14 REGULATIONS

15 12. California Code of Regulations, title 16, section 1769, subdivision (b) states:

16 "When considering the suspension or revocation of a facility or personal license on the
17 ground that the licensee or the registrant has been convicted of a crime, the board in evaluating
18 the rehabilitation of such person and her present eligibility for a license will consider the
19 following:

20 "(1) The nature and severity of the act(s) or offense(s).

21 "(2) Total criminal record.

22 "(3) Time that has elapsed since the commission of the act(s) or offense(s).

23 "(4) Whether the licensee has complied with all terms of parole, probation, restitution, or
24 any other sanctions lawfully imposed against the licensee.

25 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

26 13. California Code of Regulations, title 16, section 1770, states:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare."

5 **COST RECOVERY**

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

10 **DRUG AT ISSUE**

11 15. "Norco," a brand name for Hydrocodone with acetaminophen, is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4),
13 and is a dangerous drug pursuant to Business and Professions Code section 4022. Norco is a
14 narcotic pain reliever.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(November 15, 2010, Criminal Convictions for Burglary and** 17 **Unlawful Possession of Controlled Substance for Sale on July 28, 2010)**

18 16. Respondent is subject to disciplinary action under Code sections 490 and 4301,
19 subdivision (l), in that she was convicted of crimes substantially related to the duties, functions,
20 and qualifications of a pharmacy technician. The circumstances are as follows:

21 a. On or about November 15, 2010, in a criminal proceeding entitled *People v. Rosealie*
22 *Katherine Walker*, in the Superior Court of California, County of San Diego, Case
23 No. CD229609, Respondent was convicted by her plea of guilty to a violation of Penal Code
24 section 459 (burglary), a misdemeanor, and Health and Safety Code section 11351 (unlawful
25 possession of controlled substance for sale), a felony.

26 b. The circumstances of the crime are that on or about July 28, 2010, Respondent was
27 arrested for the unlawful possession of a controlled substance for sale, and for burglary, while
28 working as a pharmacy technician at CVS pharmacy. At the time of her arrest, Respondent had in

1 her possession 1,000 pills of Norco. Respondent admitted to one of the arresting officers that she
2 stole the Norco pills from the pharmacy in order to sell them to another.

3 c. On or about January 11, 2011, Respondent was sentenced as follows: imposition of
4 sentence suspended and summary probation granted for three years. In addition, the Court
5 ordered 120 days custody stayed pending successful completion of probation, and 10 days of
6 Public Service Program.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit)**

9 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
10 for unprofessional conduct, in that on or about July 28, 2010, she committed acts involving moral
11 turpitude, dishonesty, fraud, and deceit, when she stole Norco pills from her employer, CVS
12 pharmacy, while working there as a pharmacy technician, as set forth in paragraph 16 above,
13 which is hereby incorporated by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unlawful Possession of a Controlled Substance)**

16 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
17 for unprofessional conduct, in that on or about July 28, 2010, she unlawfully possessed a
18 controlled substance (Norco), without a prescription, in violation of Business and Professions
19 Code section 4060 and Health and Safety Code section 11350, subdivision (a), as set forth in
20 paragraph 16 above, which is hereby incorporated by reference.

21 **PRAYER**

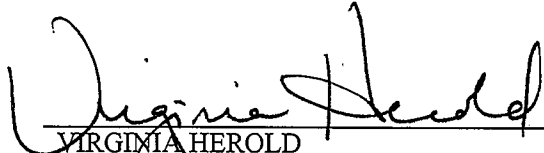
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Pharmacy issue a decision:

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78028,
25 issued to Rosalie Katherine Walker;

26 2. Ordering Rosalie Katherine Walker to pay the Board of Pharmacy the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/14/11 

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

SD2011700448