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7 · 8 · 9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA									
10	In the Matter of the Accusation Against:	Case No. 4108								
11	NICOLE MARIE PRATT									
12	14713 Fisk Court San Leandro, CA 94579	ACCUSATION								
13	Pharmacy Technician License No. TCH 80222									
14	Respondent.									
15										
16	Complainant alleges:									
17	PART	<u>IES</u>								
18	1.e Virginia Herold (Complainant) brings	this Accusation solely in her official capacitye								
19	as the Executive Officer of the Board of Pharmacy	, Department of Consumer Affairs.								
20	2.e On or about December 20, 2007, the B	Board of Pharmacy issued Pharmacy Technicians								
21	License Number TCH 80222 to Nicole Marie Pratt (Respondent). The Pharmacy Technician									
22	License was in full force and effect at all times relevant to the charges brought herein and will									
23	expire on July 31, 2013, unless renewed.									
24	JURISDI	CTION								
25	3.e This Accusation is brought before the	Board of Pharmacy (Board), Department ofe								
26	Consumer Affairs, under the authority of the following laws. All section references are to the									
27	Business and Professions Code (Code) unless otherwise indicated.									
28	///									
	1									

Accusation

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, 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. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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- (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.
- 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 11. Health and Safety Code section 11173, subdivision (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.
- 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

13. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 14. Section 4021 of the Code states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 15. Section 4022 of the Code states, in pertinent part:
- "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

•	"(a) An	y drug that	bears the	legend:	'Caution:	federal	law pr	ohibits	dispensi	ng wit	thou
prescr	iption,'	'Rx only,'	or words	of simil	ar import.						

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

16. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and Hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs.

FACTUAL BACKGROUND

- 17. From an unknown start date until on or about January 3, 2011, Respondent was employed by Kaiser Permanente as a pharmacy technician at a Kaiser Foundation Hospital Inpatient Pharmacy (HSP 41396) in Fremont, CA, where by virtue of her licensure she had access to controlled substances and dangerous drugs.
- 18. During her Kaiser employment, Respondent used this access to divert/steal, and self-administer, controlled substances/dangerous drugs, including **Vicodin** or its generic equivalent, **Hydrocodone with APAP 5/500**.
- 19. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen, and/or self-used are not known, but investigations by Kaiser and by Board Inspector(s) revealed/reported the following:
- a. Between in or about September and in or about November 2010, management at the pharmacy began noticing missing bottles of thirty (30) count Vicodin (or Hydrocodone with APAP 5/500). On or about December 8, 2010, the pharmacy filed a Report of Theft or Loss of Controlled Substances (DEA-106) identifying a shortage attributed to employee pilferage of five (5) bottles, thirty (30) tablets each, of Vicodin (or Hydrocodone with APAP 5/500). The pharmacy management staff noted that Respondent was working during all shifts when shortages were noted. A surveillance camera was installed on or about December 9, 2010.

conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

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FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.

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 Number TCH 80222, issued to Nicole Marie Pratt (Respondent);
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	3. Taking such other and further action as is deemed necessary and proper.
2	DATED: 5/29/12) harrier Suld
3	VIRGINIA HIROLD Executive Officer
4	Board of Pharmacy Department of Consumer Affairs State of California
5	State of California Complainant
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Accusation