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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:

Case No. 4258

13 **SARA E. BLACK**  
235 7th Street  
14 Seal Beach, CA 90740

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

15 **Pharmacy Technician License No. TCH 36567**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 21, 2001, the Board of Pharmacy issued Pharmacy  
23 Technician License Number TCH 36567 to Sara E. Black (Respondent). The Pharmacy  
24 Technician License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on November 30, 2012, unless renewed.

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is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(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.

10. Section 4060 of the Code states:

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

11. 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:

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

4 . . . .

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

7 . . . .

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

28 . . . .

(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.

. . . .

12. Health & Safety Code section 11173 states:

(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.

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**REGULATORY PROVISIONS**

13. California Code of Regulations, title 16, section 1769, states:

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(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

**COST RECOVERY**

15. Section 125.3 of the Code states, 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.

**DRUG AT ISSUE**

16. Hydrocodone 10/325; commonly known as Norco, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

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1 FIRST CAUSE FOR DISCIPLINE

2 (March 18, 2011 Criminal Conviction for Obtaining Controlled Substance By Fraud from  
3 February to October 22, 2010)

4 17. Respondent subjected her license to discipline under sections 490 and 4301,  
5 subdivision (l) of the Code in that Respondent was convicted of a crime that is substantially  
6 related to the qualifications, functions, and duties of a licensed pharmacy technician. The  
7 circumstances are as follows:

8 a. On or about March 18, 2011, in a criminal proceeding entitled *The People*  
9 *of the State of California vs. Sara Elizabeth Black*, in Los Angeles County Superior Court, Case  
10 Number VA117394, Respondent was convicted on her plea of guilty to violating Health &  
11 Safety Code section 11173 subdivision (a), obtaining controlled substance by fraud, a felony.  
12 Respondent was also charged with violation of Penal Code (PC) section 487, subdivision (a),  
13 grand theft of property with a value over \$950.00, a felony, which was dismissed pursuant to a  
14 plea bargain.

15 b. As a result of the conviction, on or about April 15, 2011, Respondent was  
16 sentenced to 180 days in Los Angeles County Jail with credit for one day served, which was  
17 suspended, and placed on three years formal probation. Respondent was also ordered to perform  
18 120 hours of service with the California Department of Transportation, or another agency, and  
19 pay \$400.00 in fines, \$120.00 in fees, and \$8,300.00 in restitution.

20 c. The facts that led to the conviction are that on or about July 2010, at a  
21 pharmacy in Lakewood, California where Respondent was employed, the prescription drug  
22 monitoring report for the month showed a variance of 5,980 pills of hydrocodone 10/325. The  
23 Regional Loss Prevention Manager (RLPM) and the store's supervisor agreed on a hand  
24 counting system of weekly inventory and on the installation of multiple covert cameras. On or  
25 about October 5, 2010, an inventory showed that since July 2010, an additional 3,418 tablets of  
26 hydrocodone 10/325 were missing. A review of video surveillance showed Respondent removing  
27 hydrocodone bottles from the shelf while dispensing records showed no activity of dispensing at  
28 those times. On or about October 27, 2010, while the RLPM was watching real-time feeds from

1 the covert cameras, he witnessed Respondent making a selection of hydrocodone as shown in the  
2 monitors. The RLPM interviewed Respondent who admitted to stealing 12,844 pills of  
3 hydrocodone 10/325, that she sold them for a dollar a tablet, that she would take drugs no more  
4 than four times a month, that she would remove drugs in a Rx bag that she would be picking up  
5 to take home or in her pocket and no one would check her smock while she left the store, and  
6 that she caused a loss of \$8,300.00. An audit completed from the last physical inventory of  
7 August 26, 2009 to October 27, 2010 reflected a loss of 27, 582 tablets of hydrocodone 10/325.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,  
10 Fraud, Deceit, and Corruption)**

11 18. Respondent is subject to disciplinary action under Code section 4301, subdivision  
12 (f), in that during the period of February to October, 2010, Respondent knowingly, voluntarily,  
13 and repeatedly obtained thousands of pills of hydrocodone 10/325, a controlled substance, by  
14 fraud, deceit, or misrepresentation, as detailed in paragraph 17, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violation of Drug Laws)**

17 19. Respondent is subject to disciplinary action under Code section 4301, subdivision  
18 (j), in that Respondent violated Health & Safety Code section 11173 subdivision (a), regulating  
19 controlled substances and dangerous drugs, as detailed in paragraph 17, above.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

22 20. Respondent is subject to disciplinary action under Code section 4301, subdivision  
23 (o), in that Respondent possessed hydrocodone 10/325 without a prescription in violation of  
24 Code section 4060, as detailed in paragraph 17, above, in violation of pharmacy law.

25 **PRAYER**

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

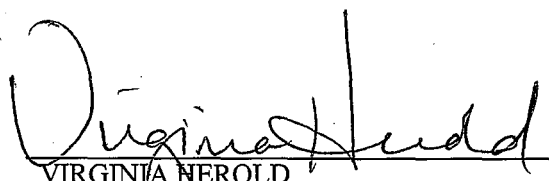
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1. Revoking or suspending Pharmacy Technician License Number TCH 36567, issued to Sara E. Black;
2. Ordering Sara E. Black to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

7/12/12



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

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