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

10 In the Matter of the Accusation Against:
11 **TAMARA MAE KAEFER**
12 **336 McCabe Drive**
13 **Greensburg, PA 15301**
14 **Pharmacy Technician License No. TCH**
5111
15 Respondent.

Case No. 4259

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about March 2, 1993, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 5111 to Tamara Mae Kaefer (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2012, 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 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."

5. 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.

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STATUTORY AND REGULATORY PROVISIONS

6. 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.

. . . ."

7. 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."

8. 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.

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

3 9. Section 4059(a) of the Code provides, in pertinent part:

4 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
5 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
6 Section 3640.7. . . ."

7 10. Section 4060 of the Code states:

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

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

22 11. Section 4324 of the Code states:

23 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
24 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
25 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
26 state prison, or by imprisonment in the county jail for not more than one year.

27 "

1 12. California Health and Safety Code § 11170 states: "No person shall prescribe,
2 administer, or furnish a controlled substance for himself."

3 **COSTS**

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 **DRUGS**

9 14. Norco and Vicodin are among the brand names for compounds of varying dosages of
10 acetaminophen (aka APAP) and hydrocodone, are Schedule III controlled substances as
11 designated by Health and Safety Code section 11056(e)(4), and are dangerous drug as designated
12 by Business and Professions Code section 4022. The varying compounds are also known
13 generically as Hydrocodone with APAP. These are all narcotic drugs.

14 **BACKGROUND**

15 15. During 2010, Respondent worked as a pharmacy technician at Safeway Pharmacy.
16 Over the course of her employment, she obtained a pharmacist's passcode and used it to falsify at
17 least 50-100 prescriptions for controlled substances, including some for Vicodin and Norco,
18 which she filled and charged to patients' insurance companies. She provided some of these
19 prescription medications to another individual so that he could sell them.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Act of Deceit or Corruption)**

22 16. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
23 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Self-Prescribing)**

26 17. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
27 Respondent violated section 11170 of the California Health and Safety Code. The circumstances
28 are that Respondent prescribed and furnished a controlled substance to herself.

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THIRD CAUSE FOR DISCIPLINE

(Illegal Furnishing of Controlled Substances)

18. Respondent is subject to disciplinary action under sections 4301(j) and (o) of the Code in that Respondent violated section 4059(a) of the Code. The circumstances are that Respondent furnished a dangerous drug to another individual without a physician's prescription.

FOURTH CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

19. Respondent is subject to disciplinary action under sections 4301(j) and (o) of the Code in that Respondent violated section 4060 of the Code. The circumstances are that Respondent possessed a controlled substance without a physician's prescription.

FIFTH CAUSE FOR DISCIPLINE

(Forgery)

20. Respondent is subject to disciplinary action under section 4301(j) and (o) of the Code in that Respondent violated section 4324 of the Code. The circumstances are that Respondent falsely passed as genuine various prescriptions.

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:

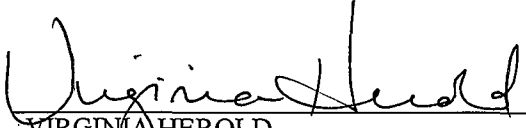
1. Revoking or suspending Pharmacy Technician License Number TCH 5111, issued to Tamara Mae Kaefer;
2. Ordering Tamara Mae Kaefer to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/1/12



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

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