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

11 In the Matter of the Accusation Against:
12
13 **KATHRYN S. ROMICK, TCH**
6771 Hazard Avenue
Westminster, CA 92683
14
15 **Pharmacy Technician Registration No. TCH**
61659
16 Respondent.

Case No. 4341

A C C U S A T I O N

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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 April 18, 2005, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 61659 to Kathryn S. Romick, TCH (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on September 30, 2012, 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. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a
6 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
7 period within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 4300 of the Code provides, in pertinent part, that every license issued may be
9 suspended or revoked.

10 **STATUTORY PROVISIONS**

11 6. Section 482 of the Code states:

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

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

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

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

18 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially
20 related to the qualifications, functions, or duties of the business or profession for which the
21 license was issued.

22 8. Section 493 of the Code states:

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

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

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

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4059(a) of the Code states:

17 A person may not furnish any dangerous drug, except upon the
18 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
19 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
20 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
21 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

22 11. Section 4060 of the Code states:

23 No person shall possess any controlled substance, except that furnished to
24 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
25 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
26 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
27 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
28 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.

12. 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

1 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
2 is not limited to, any of the following:

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

7
8 (j) The violation of any of the statutes of this state, of any other state, or
9 of the United States regulating controlled substances and dangerous drugs.

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

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30 (o) Violating or attempting to violate, directly or indirectly, or assisting in
31 or abetting the violation of or conspiring to violate any provision or term of this
32 chapter or of the applicable federal and state laws and regulations governing
33 pharmacy, including regulations established by the board or by any other state or
34 federal regulatory agency.

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36 13. Health and Safety Code section 11170 provides that "No person shall prescribe,
37 administer, or furnish a controlled substance for himself.
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1 14. Health and Safety Code section 11171 provides that "No person shall prescribe,
2 administer, or furnish a controlled substance except under the conditions and in the manner
3 provided by this division."

4 15. Health and Safety Code section 11173(a) provides that "no person shall obtain or
5 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
6 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
7 (2) by the concealment of a material fact."

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9 **REGULATORY PROVISIONS**

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

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

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

17 (2) Total criminal record.

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

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

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

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

24 For the purpose of denial, suspension, or revocation of a personal or
25 facility license pursuant to Division 1.5 (commencing with Section 475) of the
26 Business and Professions Code, a crime or act shall be considered substantially
27 related to the qualifications, functions or duties of a licensee or registrant if to a
28 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

18. 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

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1 a violation or violations of the licensing act to pay a sum not to exceed the reasonable cost
2 of the investigation and enforcement of the case.

3 **FACTS**

4 19. Respondent worked at Saddleback Memorial Medical Center in Laguna Hills,
5 California, from September 20, 2009 until she was terminated on July 29, 2011.

6 20. On July 24, 2011, a Pharmacist notified the Pharmacist in Charge of Saddleback
7 Memorial Medical Center of a theft of 100 pills of Hydrocodone/apap 7.5/325 mg from the
8 Pharmacy. The Pharmacy Technician who delivered the medication did not follow the
9 Pharmacy's procedures, and left a bag of medications including those pills on a counter when she
10 went to take her break. Before leaving on her break, the Pharmacy Technician told Respondent
11 the pills were on the counter. When the Technician returned, she delivered the rest of the
12 medication, not realizing that some of the pills were missing from the bag. A Pharmacist
13 subsequently determined that the pills were missing.

14 21. The police were called, and while Respondent initially denied taking the medication,
15 she subsequently asked to speak to the officer and admitted to taking the missing pills and placing
16 them in her car. Respondent told her employer that she found the pills on the floor and put them
17 in her pocket to return later. She later admitted to the officer that she took the pills from the
18 counter and put them in her pocket to return later, then went to her car for lunch, the bag fell into
19 her car, and she placed it in the center console of her vehicle. When the officer's searched
20 Respondent's possessions, they found a bottle of similar Norco pills in her purse with a
21 prescription written to Respondent. Respondent later recanted and admitted to taking the pills for
22 her own use because she was addicted to the drug. The medication was located in Respondent's
23 car. Respondent was arrested for theft and possession of controlled substances. The Pharmacist
24 in Charge then reported the loss to the Pharmacy Board.

25 22. On November 2, 2011, Respondent pled guilty to a violation of Health and Safety
26 Code section 11350(a) (unlawful possession of a controlled substance), a felony, and a violation
27 of Penal Code section 496(a) (receiving stolen property), a misdemeanor. In her plea form,
28 Respondent admitted that "In Orange County, California, on July 24, 2011, I did knowingly and

1 unlawfully possess a useable quantity of a controlled substance, hydrocodone, and received
2 property that I knew to be stolen.”

3 23. On November 2, 2011, pursuant to Penal Code section 1000, the Court deferred the
4 entry of judgment for 18 months while Respondent participated in a drug rehabilitation program.
5 Sentencing on the receiving stolen property charge, as well as the deferred entry of judgment
6 dismissal on the drug charge, has been set for May 2, 2013.

7 **DRUG**

8 24. Hydrocodone/apap, brand name Norco, is a dangerous drug pursuant to section 4022,
9 and a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(1)
10 which is used to treat pain.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(November 2, 2011 Criminal Conviction for Receiving Stolen Property on July 24, 2011)**

13 25. Respondent subjected her license to discipline under sections 490 and 4301,
14 subdivision (l) of the Code in that Respondent was convicted of a crime that is substantially
15 related to the qualifications, functions, and duties of a licensed pharmacy technician, as detailed
16 in paragraphs 19 to 24 above.

17 **SECOND CAUSE FOR DISCIPLINE**

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

20 26. Respondent is subject to disciplinary action under Code section 4301, subdivision
21 (f), in that on July 24, 2011 she took 100 pills of Hydrocodone/apap, a controlled substance, by
22 fraud, deceit, or misrepresentation, from her workplace, as detailed in paragraphs 19 to 24 above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Violation of Drug Laws)**

25 27. Respondent is subject to disciplinary action under Code section 4301,
26 subdivisions (j) and (o), in that Respondent violated Health & Safety Code section 11171
27 regulating the prescription of controlled substances and dangerous drugs, as detailed in
28 paragraphs 19 to 24 above.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Unlawful Possession of Controlled Substances)

28. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j) and (o), for violating Code sections 4059(a), 4060, and Health and Safety Code section 11170, when she possessed and furnished a controlled substance to herself without a prescription, as detailed in paragraphs 19 to 24 above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Unlawful Procurement of a Controlled Substance by Fraud, Deceit, Misrepresentation or Concealment of a Material Fact)

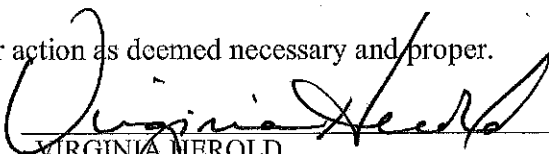
29. Respondent is subject to disciplinary action under Code section 4301, subdivisions (f), (j), and (o), as well as Health and Safety Code section 11173, subdivision a, in that she admitted that she took 100 pills of Hydrocodone/apap from the Pharmacy without a prescription or authorization from a prescriber and without paying the pharmacy for the medication, as detailed in paragraphs 19 to 24 above.

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 Registration Number TCH 61659, issued to Kathryn S. Romick, TCH;
2. Ordering Kathryn S. Romick, TCH 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: 11/27/12


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