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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:

Case No. 4482

11 **RENEE MICHELLE FOWLSTON**
12 **141 Woodbury Circle, Unit D**
13 **Vacaville, CA 95687**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 6493**

15 Respondent.

16
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 April 7, 1993, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 6493 to Renee Michelle Fowlston (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 March 31, 2013, unless renewed.

25 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 STATUTORY AND REGULATORY PROVISIONS

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
14 not be limited to, any of the following:

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

18 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the
22 practice authorized by the license.

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

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

8. 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 her license or registration in a manner consistent with the public health, safety, or welfare.”

9. 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.

10. 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.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

12. 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.

13. 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.

14. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

“‘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:

□ □ □

18. **Adipex-P** is a brand name for **phentermine**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(f)(4) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant/weight loss drug.

20. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

21. From an unknown start date until on or about May 8, 2012, Respondent worked as a pharmacy technician at a Walgreens Pharmacy (PHY 39368) in Vacaville, CA, where by virtue of her employment she had access to controlled substances and dangerous drugs. During the tenure of her employment, Respondent used her access to divert/steal controlled substances / dangerous drugs, including **Adipex-P/phentermine, Bontril/phendimetrazine, and/or Ativan/lorazepam.**

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1 22. The exact number of instances of diversion/theft by Respondent, and the full quantity
2 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of
3 investigations by Walgreens and by the Board, the following was discovered:

4 a. In or about December 2011, Walgreens Pharmacy staff noticed a discrepancy
5 between on-hand counts of **phentermine** and what was expected based on pharmacy records. In
6 or about January 2012, actual counts of generic and brand **phentermine** tablets were off again.
7 Various security measures were implemented to better monitor the **phentermine** supplies. Based
8 on monitoring of continued losses, it was determined that Respondent was one of two employees
9 handling the affected drug stock(s) during the date range(s) on which discrepancies appeared.

10 b. On or about May 4, 2012, video surveillance revealed Respondent taking brand
11 or generic **phentermine** tablets from the stock container(s) in the pharmacy.

12 c. On or about May 8, 2012, Respondent was interviewed by Walgreens staff, and
13 she confessed to taking and self-administering **phentermine**, **phendimetrazine**, and **lorazepam**.
14 At least some of the diverted drugs were consumed while Respondent was on duty. Though she
15 could not be specific about the total quantities taken or consumed, Respondent admitted to taking
16 at least ninety (90) tablets of **phentermine** over the prior 6-8 months, at least twenty (20) tablets
17 of **phendimetrazine** over the prior 2 months, and at least six (6) tablets of **lorazepam** over the
18 prior 3 months. On or about July 12, 2012, in an interview with Board Inspector(s), Respondent
19 confirmed the theft and self-use of **phentermine**, **phendimetrazine**, and **lorazepam**. She said
20 that she had diverted **phentermine** from Walgreens for self-use for about a year. She admitted to
21 never having any valid prescriptions for any of the medications diverted. She also admitted that
22 she had previously been a heavy drinker of alcohol, though she had quit drinking.

23 d. On or about July 6, 2012, Walgreens submitted a revised Report of Theft or
24 Loss of Controlled Substances (Form DEA-106) to the Drug Enforcement Administration (DEA)
25 and to the Board, in which Walgreens reported the following losses to employee pilferage: 152
26 tablets of **phentermine 15mg**, 56 tablets of **phentermine 30mg**, 872 tablets of **phentermine**
27 **37.5mg**, 12 tablets of **phendimetrazine 105mg**, and 43 tablets of **lorazepam 0.5mg**.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 23. Respondent is subject to discipline under section 4301(f) of the Code, in that
4 Respondent, as described in paragraphs 21 and 22 above, committed numerous acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Self-Administration of Controlled Substance)

8 24. Respondent is subject to discipline under section 4301(h) of the Code, in that
9 Respondent, as described in paragraphs 21 and 22 above, administered one or more controlled
10 substances to herself, including **phentermine**, **phendimetrazine**, and **lorazepam** products.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substance(s))

13 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
14 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
15 in paragraphs 21 and 22 above, furnished to herself or another, and/or conspired to furnish, and/or
16 assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that
21 Respondent, as described in paragraphs 21 and 22 above, possessed, conspired to possess, and/or
22 assisted in or abetted possession of, one or more controlled substance(s), without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

25 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
26 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
27 21 and 22 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
28 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 28. Respondent is subject to discipline under section 4301 of the Code in that
4 Respondent, as described in paragraphs 21 to 27 above, engaged in unprofessional conduct.

5 PRAYER

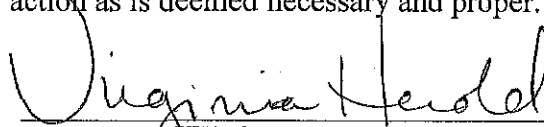
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board of Pharmacy issue a decision:

8 1. Revoking or suspending Pharmacy Technician License No. TCH 6493, issued to
9 Renee Michelle Fowlston (Respondent);

10 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

13 DATED: 2/12/13


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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