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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. 4588

11 **MICHELLE ANNE McCALLUM**
12 **9555 Archer Road**
13 **Salinas, CA 93907**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **6527**

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 Number TCH 6527 to Michelle Anne McCallum (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on January 31, 2015, 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 unless otherwise indicated.

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

18
19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.”

23 8. Section 4022 of the Code states

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

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

28

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

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

6 9. Section 4060 of the Code states:

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

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

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

23 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
24 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
25 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
26 or subterfuge; or (2) by the concealment of a material fact.

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1 12. Code of Federal Regulations Title 21, section 1308.14 states:

2 (a) Schedule IV shall consist of the drugs and other substances, by whatever official name,
3 common or usual name, chemical name, or brand name designated, listed in this section. Each
4 drug or substance has been assigned the DEA Controlled Substances Code Number set forth
5 opposite it.

6 ...
7 (c) Depressants. Unless specifically excepted or unless listed in another schedule, any
8 material, compound, mixture, or preparation which contains any quantity of the following
9 substances, including its salts, isomers, and salts of isomers whenever the existence of such salts,
10 isomers, and salts of isomers is possible within the specific chemical designation:

11 ...
12 (5) Carisoprodol. . .”

13 COSTS

14 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 DRUGS INVOLVED

19 14. Carisoprodol (Brand name Soma) is a Schedule IV controlled substance pursuant to
20 Code of Federal Regulations Title 21, section 1308.14.

21 FIRST CAUSE FOR DISCIPLINE

22 (Diversion of Drugs)

23 15. Respondent is subject to disciplinary action under section 4301(f) of the code in that
24 Respondent committed moral turpitude, dishonesty, fraud, deceit, or corruption. From
25 Approximately 2010 until approximately July, 2012, Respondent stole thousands of tablets of
26 carisoprodol from her employer, CVS, where Respondent worked as a pharmacy technician.

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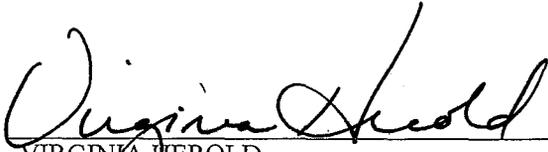
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PRAYER

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 6527, issued to Michelle Anne McCallum;
2. Ordering Michelle Anne McCallum 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: 6/10/13



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

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