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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4627

11
12 **TRACY LEANN KING**
13 **P.O. Box 891**
Yucaipa, CA 92399

A C C U S A T I O N

14 **Pharmacy Technician License No.**
15 **TCH 79399**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 7, 2007, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 79399 to Tracy Leann King (Respondent). The Pharmacy Technician
25 License was in full force and effect at all times relevant to the charges brought herein and expired
26 on July 31, 2013, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), under the
3 authority of the following laws.

4 4. Section 4001.1 of the Business and Professions Code states:

5 "Protection of the public shall be the highest priority for the California State Board of
6 Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the
7 protection of the public is inconsistent with other interests sought to be promoted, the protection
8 of the public shall be paramount."

9 5. Section 4060 of the Business and Professions Code states:

10 "No person shall possess any controlled substance, except that furnished to a person upon
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
12 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
13 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
14 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
15 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
16 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
17 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
18 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
19 with the name and address of the supplier or producer."

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

23 6. Section 4300, subdivision (a), of the Business and Professions Code states: states that
24 "[e]very license issued may be suspended or revoked."

25 7. Section 4301 of the Business and Professions Code states, in part:

26 "The board shall take action against any holder of a license who is guilty of unprofessional
27 conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

28 ...

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

4 “(g) Knowingly making or signing any certificate or other document that falsely represents
5 the existence or nonexistence of a state of facts.

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

11

12 “(j) The violation of any of the statutes of this state, or any other state, or of the United
13 States regulating controlled substances and dangerous drugs.”

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 8. Section 4327 of the Business and Professions Code states:

4 "Any person who, while on duty, sells, dispenses or compounds any drug while under the
5 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

6 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 10. Section 492 of the Business and Professions Code states:

11 "Notwithstanding any other provision of law, successful completion of any diversion
12 program under the Penal Code, or successful completion of an alcohol and drug problem
13 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
14 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
15 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
16 taking disciplinary action against a licensee or from denying a license for professional
17 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
18 pertaining to an arrest."

19 11. Section 11170 of the Health and Safety Code states:

20 "No person shall prescribe, administer, or furnish a controlled substance for himself."

21 **REGULATORY PROVISION**

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

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

1 **COST RECOVERY**

2 13. Section 125.3 provides that the Board may request the administrative law judge to
3 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
4 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

5 **CONTROLLED SUBSTANCE**

6 14. Provigil (generic name Modafinil) is categorized as a dangerous drug according to
7 Code section 4022. It is a Schedule IV controlled substance, as designated in Health and Safety
8 Code section 11057(f)(3).

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Unlawful Possession of a Controlled Substance)

11 15. Respondent is subject to disciplinary action under section Business and Professions
12 Code 4301 subdivision (k) and/or (l) in that Respondent was found guilty of violating statutes
13 regulating controlled substances in this state and/or the United States. The circumstances are as
14 follows:

15 16. On or about December 8, 2011, in the criminal proceeding entitled *The People of the*
16 *State of California v. Tracy Leann King* (Super. Ct. of California, San Bernardino County, No.
17 FSB1105402), on her plea of guilty to one misdemeanor count of violating PC M487(A) [grand
18 theft], the Court placed Respondent on conditional and revocable release for thirty-six (36)
19 months. The Court ordered Respondent to pay fines, serve 180 days in country jail, and to stay
20 away from CVS stores.

21 17. The circumstances of the conviction were that on or about November 23, 2011 and
22 November 25, 2011, while working as a pharmacy technician at CVS Pharmacy # 9649 (PHY
23 47946), located at 33499 Yucaipa Blvd, Yucaipa, California, Respondent diverted 23 bottles of
24 Provigil 200 mg #30 and 3 bottles of Provigil 100 mg # 30 for which she agreed to repay the
25 pharmacy the sum of \$22,610.74.

26 18. Additionally, Respondent admitted that commencing in about June 2011, she began
27 taking Provigil from CVS Pharmacy # 9649. She initially began taking 1 bottle per week, and
28 then increased her theft to 2 bottles per week.

1 19. Respondent did not have a prescription for the controlled substances Provigil;
2 however she removed the tablets from the pharmacy for her own personal consumption.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct-Dishonesty)

5 20. Respondent is subject to disciplinary action under section Business and Professions
6 Code 4301 subdivision (f) in that she pled guilty to the commission of act(s) involving moral
7 turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are set forth more fully in
8 paragraphs 16 through 19 above, and incorporated herein by this reference.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Dispensing or Compounding While Under the Influence of Drugs)

11 21. Respondent is subject to disciplinary action under section Business and Professions
12 Code 4301 subdivision (h) in that while working as a pharmacy technician at CVS Pharmacy
13 located in Yucaipa, California, Respondent self-administered Provigil, a controlled substance.
14 Respondent's consumption of the controlled substances while employed as a pharmacy technician
15 impaired her ability to conduct her job safely. The circumstances are set forth more fully in
16 paragraph 17 through 19 above, and incorporated herein by this reference.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 (Unlawful Possession and Administration of a Controlled Substance)

19 22. Respondent is subject to disciplinary action under section Health and Safety Code
20 Section 11170 in that while working as a pharmacy technician at CVS Pharmacy located in
21 Yucaipa, California, she prescribed, administered, or furnished controlled substances to herself.
22 The circumstances are set forth more fully in paragraph 17 through 19 above, and incorporated
23 herein by this reference.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (Unlawful Possession of a Controlled Substance)

26 23. Respondent is subject to disciplinary action under section Business and Professions
27 Code 4060 in that while working as a pharmacy technician at CVS Pharmacy located in Yucaipa,
28 California, Respondent unlawfully possessed Provigil, a controlled substance, without a

1 prescription. The circumstances are set forth more fully in paragraph 17 through 19 above, and
2 incorporated herein by this reference.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 (Sale, Dispensing, or Compounding While under the Influence of Drugs)

5 24. Respondent is subject to disciplinary action under section Business and Professions
6 Code Section 4327 in that while on duty as a pharmacy technician at CVS Pharmacy located in
7 Yucaipa, California Respondent sold, dispensed or compounded drugs while under the influence
8 of a controlled substance. The circumstances are set forth more fully in paragraph 17 through 19
9 above, and incorporated herein by this reference.

10 **PRAYER**

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

13 1. Revoking or suspending Pharmacy Technician License Number TCH 79399, issued
14 to Tracy Leann King;

15 2. Ordering Tracy Leann King to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3; and

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

19 DATED: _____

9/19/13



20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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