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

11 In the Matter of the Accusation Against:

Case No. 4847

12 **KATHLEEN M. SHUBIN**
13 **1107 S. Ross Street**
14 **Santa Ana, CA 92707**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 35276**

Respondent.

17
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 November 27, 2000, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 35276 to Kathleen M. Shubin (Respondent). The Pharmacy
24 Technician Registration expired on June 30, 2012, and has not been 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 9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
2 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
4 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

6 10. Section 4060 of the Code states:

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

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

23 11. Section 4301 of the Code states:

24 The board shall take action against any holder of a license who is guilty of
25 unprofessional conduct or whose license has been procured by fraud or
26 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
27 not limited to, any of the following:

28 (a) Gross immorality.

...

(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.

...

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may

1 inquire into the circumstances surrounding the commission of the crime, in order to
2 fix the degree of discipline or, in the case of a conviction not involving controlled
3 substances or dangerous drugs, to determine if the conviction is of an offense
4 substantially related to the qualifications, functions, and duties of a licensee under
5 this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere is deemed to be a conviction within the meaning of this provision. The
7 board may take action when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under
10 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
11 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
12 dismissing the accusation, information, or indictment.

13 ...

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

19 ...

20 REGULATORY PROVISIONS

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

22

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

- 27 (1) Nature and severity of the act(s) or offense(s).
- 28 (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

1 **COST RECOVERY**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **DRUG**

9 15. Hydrocodone/apap 10/325 is the generic name for Vicodin, a narcotic pain reliever.
10 It is a combination of hydrocodone and acetaminophen, which is a less potent pain reliever that
11 increases the effects of hydrocodone. The combination of acetaminophen and hydrocodone is
12 used to relieve moderate to severe pain. Hydrocodone/apap 10/325, is a Schedule III controlled
13 substance per Health and Safety Code section 11056 (e)(4), and a dangerous drug per Business
14 and Professions Code section 4022

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(May 9, 2011 Conviction for Possession of Controlled Substances
17 for Sale Between March 2010 and September 2010)**

18 16. Respondent has subjected her license to discipline for unprofessional conduct under
19 sections 490 and 4301, subdivision (I) of the Code in that she was convicted of a crime that is
20 substantially related to the qualifications, duties, and functions of a pharmacy technician. The
21 circumstances are as follows:

22 a. On or about May 9, 2011, in a criminal proceeding entitled *People of the State of*
23 *California v. Kathleen Mary Shubin*, Orange County Superior Court, case number 10SF1140,
24 Respondent was convicted on her plea of guilty to violating Health and Safety Code section
25 11351 (unlawful possession of controlled substances for sale), a felony.

26 b. Respondent was sentenced to three years of formal probation, and ordered to serve
27 one day in custody, complete 80 hours of community service, pay fines, penalties and restitution,

28 ///

1 and register pursuant to Health and Safety Code section 11590, among other terms and conditions
2 of probation.

3 c. The circumstances surrounding the conviction are that between March of 2010 and
4 September of 2010, Respondent was working as a pharmacy technician at the Garfield Beach
5 CVS Pharmacy, (CVS) in Mission Viejo, California. In or about July of 2010, the Pharmacist-in-
6 Charge (PIC) at CVS, was informed by a Regional Loss Prevention Manager for CVS that a
7 larger amount of Hydrocodone/Apap 10/325 was being ordered for this pharmacy location, than
8 was being sold. A comparison of the increased amount of the drug ordered and a dispensing
9 history led to the discovery of a significant loss of Hydrocodone/Apap 10/325. From that point
10 forward, a perpetual inventory was kept for this drug and extra security cameras were installed in
11 the pharmacy to solve the mystery. The result of the close monitoring revealed that Respondent
12 was observed on video camera diverting the hydrocodone. The police were contacted and
13 Respondent was arrested. An inventory of the missing hydrocodone revealed that 13,222 tablets
14 were unaccounted for. Respondent admitted that she had taken twelve 500 tablet bottles of the
15 hydrocodone. Each 500 tablet bottle cost \$329.99. Respondent admitted that she stole the
16 hydrocodone and gave it to a person who sold it for \$2.00 a pill and who gave her \$400.00 per
17 bottle.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Gross Immorality)**

20 17. Respondent is subject to disciplinary action for unprofessional conduct under section
21 4301(a) in that she committed gross immorality by stealing hydrocodone from her employer and
22 providing it for sale, as set forth above in paragraph 16, which is incorporated by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Moral Turpitude, Fraud, Deceit, Misrepresentation and Subterfuge)**

25 18. Respondent is subject to disciplinary action for unprofessional conduct under section
26 4301(f) in that she displayed moral turpitude, and committed fraud, deceit, misrepresentation and
27 subterfuge, by stealing hydrocodone from her employer and providing the hydrocodone for sale,
28 as set forth above in paragraph 16, which is incorporated by reference.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violated Statutes Governing Controlled Substances and Dangerous Drugs)**

3 19. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301(o) in that she violated statutes and laws of this state, including Code sections 4059, 4060,
5 and 4301, regulating controlled substances and dangerous drugs, as set forth above in paragraph
6 16, which is incorporated by reference.

7 **PRAYER**

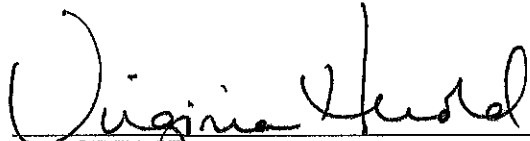
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 35276,
11 issued to Kathleen M. Shubin

12 2. Ordering Kathleen M. Shubin to pay the Board of Pharmacy the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;

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

16
17
18 DATED: 10/24/13



19 VIRGINIA HAROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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