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

12 In the Matter of the Accusation Against:

Case No. 4985

13 **DAVID ANTHONY WHITE**
12686 Kestrel Street
14 San Diego, CA 92129

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 11147**

17 Respondent.

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 December 23, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 11147 to David Anthony White (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on May 31, 2015, 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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9 operation of law or by order or decision of the board or a court of law, the placement of a
10 license on a retired status, or the voluntary surrender of a license by a licensee shall not
11 deprive the board of jurisdiction to commence or proceed with any investigation of, or
12 action or disciplinary proceeding against, the licensee or to render a decision suspending
13 or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 492 of the Code states:

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

22 This section shall not be construed to apply to any drug diversion program
23 operated by any agency established under Division 2 (commencing with Section 500) of
24 this code, or any initiative act referred to in that division.

25 7. Section 4022 of the Code states

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

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

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

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

1 8. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
2 any dangerous drug or dangerous device except upon the prescription of a physician, dentist,
3 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

4 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
5 controlled substance, except that furnished to a person upon the prescription of a physician,
6 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

7 10. Section 4301 of the Code states:

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

12

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

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

19

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

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25 11. United States Code, title 21, section 843 states, in pertinent part:

26 (a) It shall be unlawful for any person knowingly or intentionally –

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28 (3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

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1 **REGULATORY PROVISIONS**

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

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

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

9 (2) Total criminal record.

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

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

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

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

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

22 **COSTS**

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

DRUG

15 15. Hydrocodone/APAP, sold commercially as Norco, is a Schedule III controlled
16 substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a
17 dangerous drug pursuant to Business and Professions Code section 4022.

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1 **FACTUAL ALLEGATIONS**

2 16. On or about August 1, 2013, the Regional Loss Prevention Manager for CVS
3 Pharmacy met with a Task Force Officer (TFO) with the Drug Enforcement Administration
4 (DEA) regarding the suspected theft of Norco from one of its San Diego pharmacies. The
5 missing Norco was discovered during an audit on May 16, 2013. The timeframe of the audit
6 included dates between October 7, 2012 and May 15, 2013. From that point forward, the CVS
7 pharmacy conducted a daily count of its inventory.

8 17. Respondent's pharmacy technician registration expired on May 31, 2013, and CVS
9 assigned him to cashier duty. He was directed not to handle or dispense medications until his
10 registration was reinstated.

11 18. On June 9, 2013, CVS installed covert surveillance cameras in the pharmacy to
12 monitor its activities. From May 29, 2013 to June 24, 2013, no loss of Norco was recorded. On
13 the same day Respondent's pharmacy technician registration was reinstated, on June 26, 2013,
14 the pharmacy's inventory count showed a loss of 100 tablets of Norco from the previous day.
15 Surveillance cameras captured video on June 25, 2013 wherein Respondent was recorded taking a
16 bottle of Norco from the main shelving unit (a.k.a. "end cap") and walking out of view.
17 Respondent was not authorized to be in the pharmacy because his registration was not valid. The
18 daily inventory revealed that no Norco had been dispensed on June 25, 2013.

19 19. In an inventory count conducted on July 1, 2013, a shortage of 160 tablets of Norco
20 was reported between June 28 and July 1. On June 30, 2013, closed circuit surveillance video
21 showed Respondent selecting a bottle of Norco from the end cap and walking out of the cameras'
22 view. The daily inventory revealed that no Norco had been dispensed on June 30, 2013.

23 20. On July 20, 2013, a shortage of 120 tablets of Norco was reported. The missing
24 tablets were from a "returned to stock" bottle for a prescription that had been filled on July 19,
25 2013. The Pharmacy Manager stated that she saw the bottle of Norco on the end cap, but only
26 noticed it missing after Respondent's shift ended and he had left the pharmacy. A review of the
27 covert video surveillance showed Respondent taking the bottle of Norco and turning away from
28 the camera. When he turned back to the camera, the bottle was gone. The daily inventory report

1 for July 20, 2013 showed that 150 tablets of Norco had been dispensed and witnessed by the
2 Pharmacy Manager.

3 21. Based on its investigation, CVS estimated that between October 7, 2012 and July 24,
4 2013, 3,473 tablets of Norco, with an estimated value of \$2,709.00, had gone missing. On or
5 about August 2, 2013, the Regional Loss Prevention Manager for CVS attempted to conduct an
6 interview with Respondent when he arrived for his shift. Respondent was uncooperative and
7 tried to leave the store, but he was intercepted and arrested by the DEA.

8 22. As a result of the arrest, on or about August 6, 2013, a felony complaint was filed in
9 San Diego County Superior Court, case number CD249864, charging Respondent with three
10 counts of violating Health and Safety Code section 11350, subdivision (a), possession of a
11 controlled substance, to wit, hydrocodone; Penal Code section 508, embezzlement by a
12 clerk/agent/servant; and Penal Code section 484, petty theft.

13 23. On or about October 2, 2013, Respondent entered a plea of guilty to one count of
14 violating Health and Safety Code section 11350, subdivision (a). The court deferred entry of
15 judgment for 18 months, and Respondent was ordered to enroll in a substance abuse treatment
16 program. The remaining counts were dismissed by the court pursuant to the plea agreement.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Violation of Statutes Regulating Controlled Substances)**

19 24. Respondent has subjected his registration to discipline under section 4301,
20 subdivision (j) of the Code in that he illegally possessed hydrocodone on or about June 25, 2013,
21 June 30, 2013, and July 20, 2013, as described in paragraphs 16-21, above, a violation of Health
22 and Safety Code section 11350, subdivision (a), Title 21 U.S.C. section 843, subdivision (a)(3),
23 Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.),
24 and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.).

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

3 25. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (f) of the Code for unprofessional conduct in that Respondent stole controlled
5 substances from his employer using dishonesty, fraud and deceit, as described in paragraphs 16-
6 21, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

9 26. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
10 Code for unprofessional conduct in that on or about June 25, 2013, June 30, 2013, and July 20,
11 2013, Respondent violated Business and Professions Code sections 4059 and 4060, when he
12 illegally furnished to himself and possessed controlled substances, as described in paragraphs 16-
13 21, above.

14 **DISCIPLINARY CONSIDERATIONS**

15 27. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
16 to California Code of Regulations, title 16, section 1769, Complainant alleges:

17 a. On or about March 15, 2012, at approximately two o'clock in the morning, a
18 patrol deputy with the San Diego County Sheriff's Department observed Respondent drive past
19 him at a high rate of speed. After conducting a traffic stop, the deputy made contact with
20 Respondent and observed an odor of an alcoholic beverage emitting from Respondent, his eyes
21 were red and watery, and he admitted to consuming alcohol earlier in the evening. Respondent
22 submitted to a series of field sobriety tests which indicated impairment. Respondent provided
23 two breath samples which were analyzed with a blood alcohol concentration (BAC) of .104 and
24 .096, respectively. Respondent was arrested for driving under the influence. Two additional
25 breath samples submitted during booking were tested with a BAC of .10 and .098 percent.

26 b. As a result of the arrest, on or about April 26, 2012, in a criminal proceeding
27 entitled *People of the State of California v. David Anthony White*, in San Diego County Superior
28 Court, case number M148523, Respondent was convicted on his plea of guilty of violating

1 Vehicle Code section 23103, alcohol-related reckless driving, a misdemeanor, a count substituted
2 for the original charges of driving under the influence of alcohol (Veh. Code, § 23152(a)), and
3 driving with a BAC of .08 percent or more (Veh. Code, § 23152(b)), pursuant to Vehicle Code
4 section 23103.5, subdivision (a).

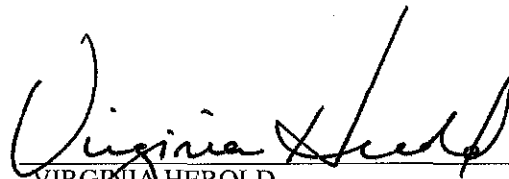
5 c. As a result of the conviction, on or about July 27, 2012, the Board issued
6 Citation number CI 2011 51800 to Respondent. The Citation alleged that Respondent's
7 unprofessional conduct violated Business and Professions Code section 4301, subdivision (h) in
8 that he used an alcoholic beverage to a dangerous extent; and section 4301, subdivision (l), in that
9 he was convicted of a crime substantially related to the practice of pharmacy. Respondent was
10 assessed a fine in the amount of \$150.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 11147,
15 issued to David Anthony White;
- 16 2. Ordering David Anthony White to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

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21
22 DATED: 4/9/14



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

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