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

12 In the Matter of the Accusation Against:

Case No. 5170

13 **KEVIN PATRICK MCCARTHY**
14 **3215 E. Main St., #23**
Ventura, CA 93003

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **916559**

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 June 11, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 916559 to Kevin Patrick McCarthy (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on April 30, 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 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 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
9 disciplinary action during the period within which the license may be renewed, restored, reissued
10 or reinstated.

11 **STATUTORY PROVISIONS**

12 6. Section 4301 of the Code states in pertinent part:

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

17

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 7. Section 4327 of the Code states:

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

26 8. Section 11170 of the Health and Safety Code states:

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

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1 DRUGS

2 7. Norco 10/325, a brand name for Hydrocodone/apap, is a Schedule III controlled
3 substance as designated by Health and Safety Code section 11056 subdivision (e) and is a
4 dangerous drug pursuant to Business and Professions Code section 4022. The indication for use
5 is for pain.

6 9. Ativan, a brand name for Lorazepam, is a Schedule IV controlled substance as
7 designated by Health and Safety Code section 11057, subdivision (d), and is a dangerous drug
8 pursuant to Business and Professions Code section 4022. The indication for use is for anxiety.

9 10. Klonopin, a brand name for Clonazepam, is a Schedule IV controlled substance as
10 designated by Health and Safety Code section 11057, subdivision (d), and is a dangerous drug
11 pursuant to Business and Professions Code section 4022. The indication for use is for anxiety.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct - Dangerous Use Of Drugs)

14 11. Respondent subjected his pharmacy technician registration to discipline under Code
15 sections 4301, subdivision (h) in that commencing in or about 2011 and continuing through 2013,
16 Respondent used dangerous drugs including Hydrocodone/apap, Clonazepam and/or Lorazepam
17 to the extent and in a manner that was dangerous and injurious to himself and to the public while
18 he was employed in a pharmacy as a pharmacy technician. The circumstances are as follows:

19 12. On or about November 14, 2010, Respondent was hired as a full-time pharmacy
20 technician rotating through in-patient pharmacy's shifts at Ventura County Medical Center
21 Pharmacy located at 3291 Lorna Vista Road, in Ventura, CA 93003.

22 13. In or about January 2013, Respondent requested and was transferred to the infusion
23 pharmacy.

24 14. While employed at Ventura County Medical Center Pharmacy, Respondent had
25 multiple sick days, tardiness and inexcusable neglect of duty. His performance as a pharmacy
26 technician was jeopardized and he received multiple written counseling notifications on at least
27 five (5) dates between October 14, 2011 and March 28, 2013 and received a written reprimand on
28 June 21, 2013.

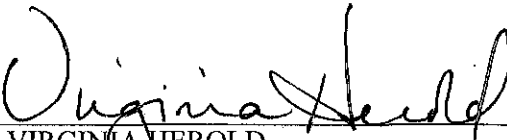
1 15. On or about July 8, 2013, Respondent contacted his manager and informed him of his
2 dependence on controlled substances. Respondent's medical records showed that since January
3 1, 2011, Respondent had been taking the dangerous drugs Hydrocodone/apap, Clonazepam and/or
4 Lorazepam on a regular basis and that they were taken routinely every month since August 2012.

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 Registration Number TCH 916559,
9 issued to Kevin Patrick McCarthy
10 2. Ordering Kevin Patrick McCarthy, to pay the Board of Pharmacy the reasonable costs
11 of the investigation and enforcement of this case, pursuant to Business and Professions Code
12 section 125.3;
13 3. Taking such other and further action as deemed necessary and proper.
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16 DATED: 12/3/14


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

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