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

11 In the Matter of the Accusation Against:

Case No. 5424

12 **BUFFY JEANNE DULAC**
13 **1018 Cortina Ct.**
Orland, CA 95963

A C C U S A T I O N

14 **Pharmacy Technician Registration**
15 **No. TCH 117193**

16 Respondent.

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 ("Board"), Department of Consumer Affairs.

21 2. On or about October 3, 2011, the Board issued Pharmacy Technician Registration
22 Number TCH 117193 to Buffy Jeanne Dulac ("Respondent"). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 expired on January 31, 2015, without renewal.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Section 4300 of the Code states, in pertinent part:

2 (a) Every license issued may be suspended or revoked.

3 (b) The board shall discipline the holder of any license issued by the board,
4 whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

7 (3) Suspending his or her right to practice for a period not exceeding one
8 year.

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

11 5. Section 4300.1 of the Code states:

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

16 **STATUTORY PROVISIONS**

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

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

21 ...
22 (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.

23 ...
24 (j) The violation of any of the statutes of this state, of any other state, or of
the United States regulating controlled substances and dangerous drugs.

25 ...
26 (l) The conviction of a crime substantially related to the qualifications,
27 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
28 United States Code regulating controlled substances or of a violation of the

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

18 ...

19 (p) Actions or conduct that would have warranted denial of a license.

20 7. Code section 4022 states, in pertinent part:

21 "Dangerous drug" . . . means any drug . . . unsafe for self-use in humans or
22 animals, and includes the following:

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

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

27 8. Section 4059 states, in pertinent part:

28 (a) A person may not furnish any dangerous drug, except upon the
prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7. . . .

9. Section 4060 of the Code states, in pertinent part:

A person shall not possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

10. Health and Safety Code section 11170 states: "No person shall prescribe,
administer, or furnish a controlled substance for himself."

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1 11. Health and Safety Code section 11173 states, in pertinent part:

2 (a) No person shall obtain or attempt to obtain controlled substances, or
3 procure or attempt to procure the administration of or prescription for controlled
4 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
5 concealment of a material fact.

6 **DRUG**

7 12. **Hydrocodone/Acetaminophen** is the generic name for Lortab, Norco, and Vicodin,
8 and is a Schedule II controlled substance as designated by Health and Safety Code section 11056,
9 subdivision (e)(4), and a dangerous drug within the meaning of Code section 4022. It is a
10 narcotic used for pain relief.

11 **COST RECOVERY**

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

16 **BACKGROUND**

17 14. From on or about June 15, 2012, to on or about April 24, 2014, Respondent was
18 employed as a Registered Pharmacy Technician by Wal-Mart Pharmacy 10-1608 located at 1025
19 South Main Street, Red Bluff, California.

20 15. On or about February 20, 2014, while employed and on duty at Wal-Mart Pharmacy
21 10-1608, Respondent obtained and possessed two (2) Hydrocodone/APAP 10/325 mg tablets
22 from the Pharmacy's supply, without a valid prescription, and self-administered them.

23 16. On or about April 24, 2014, Respondent admitted that she had taken the two (2)
24 Hydrocodone/ APAP 10/325 mg tablets on or about February 20, 2014, for her personal use.

25 17. On or about April 24, 2014, Wal-Mart Stores terminated Respondent from her
26 position on the grounds of theft and diversion of controlled substances.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Acts of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 on the grounds of unprofessional conduct in that Respondent committed acts of moral turpitude,
5 dishonesty, fraud, deceit, or corruption when she obtained two (2) tablets of the controlled
6 substance Hydrocodone/ APAP 10/325 mg from her employer. The underlying circumstances are
7 set forth in paragraphs 14 through 17, above, incorporated herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violated Statutes Regulating Controlled Substances and Dangerous Drugs)**

10 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
11 on the grounds of unprofessional conduct in that Respondent violated statutes of this state
12 regulating controlled substances and dangerous drugs as follows:

13 a. Respondent violated Code section 4059 in that she unlawfully self-furnished two
14 (2) tablets of the controlled substance and dangerous drug Hydrocodone/APAP 10/325 mg
15 without a lawful prescription in violation of Code section 4022, as set forth in paragraphs 14
16 through 17, above, incorporated herein by reference.

17 b. Respondent violated Code section 4060 in that she unlawfully possessed two (2)
18 tablets of the controlled substance and dangerous drug Hydrocodone/APAP 10/325 mg without a
19 lawful prescription, as set forth in paragraphs 14 through 17, above, incorporated herein by
20 reference.

21 c. Respondent violated Health and Safety Code section 11170 in that she
22 unlawfully furnished to herself two (2) tablets of Hydrocodone/ APAP 10/325 mg , a controlled
23 substance, without a lawful prescription, as set forth in paragraphs 14 through 17, above,
24 incorporated herein by reference.

25 d. Respondent violated Health and Safety Code section 11170 in that she
26 unlawfully self-administered two (2) tablets of Hydrocodone/ APAP 10/325 mg , a controlled
27 substance without a lawful prescription, as set forth in paragraphs 14 through 17, above,
28 incorporated herein by reference.

1 e. Respondent violated Health and Safety Code section 11173 in that she obtained
2 two (2) tablets of the controlled substance Hydrocodone/ APAP 10/325 mg by fraud, deceit,
3 misrepresentation, or subterfuge or by the concealment of a material fact, as set forth in
4 paragraphs 14 through 17, above, incorporated herein by reference.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Criminal Conviction)**

7 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
8 on the grounds of unprofessional conduct in that on or about January 14, 2015, in the case titled
9 *People v. Buffy Jeanne Dulac*, Tehama County Superior Court Case No. NCR90980, Respondent
10 was convicted upon the guilty verdict to violating Penal Code section 484, subdivision (a)
11 [unlawfully stealing, taking, and carrying away the personal property of another (Walmart)], a
12 misdemeanor. Said crime is substantially related to the duties, functions, and qualifications of a
13 licensed Pharmacy Technician. The underlying circumstances are set forth in paragraphs 15 and
14 16, above, incorporated herein by reference.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 117193
19 issued to Buffy Jeanne Dulac;
- 20 2. Ordering Buffy Jeanne Dulac to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

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

DATED: _____

5/21/15

Virginia Herold

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

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