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

12 In the Matter of the Accusation Against:

Case No. 5548

13 **DIANA DEBBIE BAUMER,**
AKA DIANA DEBBIE VALENZUELA
14 **1201 Parnell Place**
Costa Mesa, CA 92626

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 1484**

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 November 4, 1992, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 1484 to Diana Debbie Baumer, also known as Diana Debbie
25 Valenzuela (Respondent). The Pharmacy Technician Registration was in full force and effect at
26 all times relevant to the charges brought herein and will expire on August 31, 2016, unless
27 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 4022 of the Code states

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

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

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

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

24 7. Section 4026 of the Code states: "'Furnish' means to supply by any means, by sale or
25 otherwise."

26 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
27 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor.

9. Section 4060 of the Code states, in pertinent part, that a person may not possess any
controlled substance, except that furnished to a person upon the prescription of a physician,
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

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10. Section 4301 of the Code states:

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

....

(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.

....

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

....

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

11. Health and Safety Code section 11173, subdivision (a) states:

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

12. United States Code, title 21, section 843, subdivision (a)(3) states:

(a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

REGULATORY PROVISIONS

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

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

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1 **COSTS**

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
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **DRUG**

9 15. Hydrocodone bitartate with acetaminophen (hydrocodone APAP), is a Schedule II
10 controlled substance as designated by Title 21, Code of Federal Regulations section 1308.12,
11 subdivision (b)(1)(vi), and it is designated as a Schedule III controlled substance under
12 (California) Health and Safety Code section 11056, subdivision (e)(4). It is a dangerous drug
13 pursuant to Business and Professions Code section 4022.

14 **FACTUAL ALLEGATIONS**

15 16. On April 29, 2014, the Board received notification that a CVS Pharmacy in Costa
16 Mesa had reported a significant loss of hydrocodone APAP and carisoprodol from its inventory.
17 In a subsequent inspection of the pharmacy conducted by the Board on March 5, 2015, a CVS
18 pharmacist told the Board Inspector that Respondent had been involved in the diversion of
19 hydrocodone APAP while employed as a pharmacy technician. On or about November 20, 2014,
20 Patient MB contacted CVS Pharmacy after she discovered she received only three of the four
21 prescriptions she picked up at the pharmacy. One bottle containing 100 tablets of hydrocodone
22 APAP 10/325 mg was missing. Respondent was identified as the employee who dispensed the
23 prescription to Patient MB. A CVS Loss Prevention Manager interviewed Respondent on
24 December 11, 2014. In a written statement, Respondent admitted that she stole the hydrocodone
25 APAP prescription that she did not give to Patient MB, and she also admitted stealing additional
26 hydrocodone at least four times. Respondent stated that she gave the stolen medication to her
27 father "who was always in pain." The total loss attributed to Respondent's diversion was 220
28 tablets of hydrocodone APAP 10/325 mg, and 5 tablets of hydrocodone APAP 5/325 mg.

1 Respondent agreed to reimburse CVS Pharmacy in the amount of \$169.98 for the stolen
2 hydrocodone APAP. Respondent's employment with CVS Pharmacy was terminated.

3 **FIRST CAUSE FOR DISCIPLINE**

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

5 17. Respondent has subjected her registration to discipline under section 4301,
6 subdivision (f) of the Code for unprofessional conduct in that Respondent stole hydrocodone
7 APAP from a patient and her employer using fraud, deceit, and dishonesty, as described in
8 paragraph 16, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Violation of California Statutes Regulating Controlled Substances)**

11 18. Respondent has subjected her registration to discipline under section 4301,
12 subdivision (j) of the Code for unprofessional conduct in that Respondent knowingly violated
13 Health and Safety Code section 11173, subdivision (a), Title 21 U.S.C. section 843, subdivision
14 (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et
15 seq.), as described in paragraph 16, above.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 19. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
19 Code for unprofessional conduct in that she violated Business and Professions Code sections
20 4059 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16,
21 Section 1700, et seq.), when she obtained controlled substances using fraud and deceit, as
22 described in paragraph 16, above.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 1484,
27 issued to Diana Debbie Baumer, also known as Diana Debbie Valenzuela;

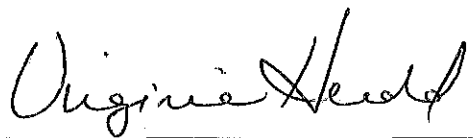
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2. Ordering Diana Debbie Baumer to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/8/16



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

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