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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 5799	
12	OLAJID OLUSOLA GBENLE 33426 13th Street		
13	Union City, CA 94587	ACCUSATION	
14	Pharmacy Technician License No. TCH 75623		
15	Respondent.		
16			
17	Complainant alleges:		
18	<u>PARTIES</u>		
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
21	2. On or about May 4, 2007, the Board issued Pharmacy Technician License No. TCH		
22	75623 to Olajid Olusola Gbenle (Respondent). The License was in full force and effect at all		
23	times relevant to the charges brought herein and will expire on March 31, 2017, unless renewed.		
24	<u>JURISDICTION</u>		
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
26	Consumer Affairs, under the authority of the following laws. All section references are to the		
27	Business and Professions Code (Code) unless otherwise indicated.		
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of 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.

## STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (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.
- (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.

8. 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 her license or registration in a manner consistent with the public health, safety, or welfare."

- 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 12. Health and Safety Code section 11173, subdivision (a), provides that 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.
- 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

## COST RECOVERY

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

## CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

16. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

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

. . .

- "(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."
- 17. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

## FACTUAL BACKGROUND

- 18. In or about January 2016, in a random drug screen performed in his workplace by his pharmacy employer (Walgreens), Respondent tested positive for **marijuana**, **hydrocodone**, and **hydromorphone**, all controlled substances. Respondent subsequently admitted:
  - that on several occasions during the preceding year, he had stolen from Walgreens pharmacy or pharmacies, and self-administered, controlled substances including at least one hundred (100) tablets of **hydrocodone** with acetaminophen (**Norco**);
  - that he had been diagnosed with a condition that caused back pain between two (2) and three (3) years prior, and that he began to self-medicate with **Norco** by stealing the medication from Walgreens while working as a technician;
  - that he started with taking two (2) tablets of **Norco** per day and then gradually increased to a more recent dosage of eight (8) to ten (10) tablets per day;
  - that his diversion/theft of **Norco** had been going on since before October 2014;
  - that he also started using medical marijuana in or about December 2015; and
  - that he had developed a dependency on **Norco**.

1	19. On or about February 4, 2016, the Walgreens location by which Respondent was	
2	primarily employed (PHY 52749) submitted a Report of Theft or Loss of Controlled Substances	
3	(Form DEA-106) that reported employee pilferage of: 1,154 tablets of <b>hydrocodone</b> with	
4	acetaminophen 10/325mg ( <b>Norco</b> ); 86 tablets of <b>amphetamine-dextroamphetamine</b> 20mg; 61	
5	tablets of <b>hydromorphone</b> 4mg; and 5 tablets of <b>hydromorphone</b> 2mg.	
6		
7	FIRST CAUSE FOR DISCIPLINE	
8	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)	
9	20. Respondent is subject to discipline under section 4301(f) of the Code, in that	
10	Respondent, as described in paragraphs 18 and 19 above, committed acts involving moral	
11	turpitude, dishonesty, fraud, deceit, or corruption.	
12		
13	SECOND CAUSE FOR DISCIPLINE	
14	(Furnishing of Controlled Substance(s))	
15	21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
16	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described	
17	in paragraphs 18 and 19 above, furnished to himself or another without a valid prescription,	
18	and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.	
19		
20	THIRD CAUSE FOR DISCIPLINE	
21	(Possession of Controlled Substance(s))	
22	22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
23	4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described	
24	in paragraphs 18 and 19 above, possessed, conspired to possess, and/or assisted in or abetted	
25	possession of, a controlled substance, without a prescription.	
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FOURTH CAUSE FOR DISCIPLINE