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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JENNIFER LYNNE MARTINEZ** **709 Maryland Street** **Fairfield, CA 94533** **Pharmacy Technician Registration No. TCH 70267** Respondent.	Case No. 5828 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 2, 2006, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 70267 to Jennifer Lynne Martinez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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 PROVISIONS

6. Section 4059, subdivision (a) of the Code states: "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. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

7. Section 4060 of the Code states:

"No person shall 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

. . ."

8. Section 4301 of the Code provides, in relevant part:

"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.

. . ."

9. 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.

10. 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.

11. 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, subdivision (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. Products like these that combine hydrocodone with non-controlled substances are also called hydrocodone combination products. Effective October 6, 2014, hydrocodone combination productions were switched at the federal level from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to Schedule II (21 C.F.R. § 1308.12(b)(1)). This includes Hydrocodone with APAP drugs.

12. Cephalexin is a dangerous drug as designated by Business and Professions Code section 4022.

COSTS

13. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

14. In or around 2015, Respondent was employed as a pharmacy technician at a Walgreens pharmacy in Vallejo, California. On or about September 29, 2015, Respondent admitted to removing a container of hydrocodone/acetaminophen 10/325mg from a pharmacy drawer and passing the container to one of Respondent's friends through the pharmacy's drive-thru window. Respondent's friend did not have a prescription for the medication and did not pay for it. Respondent admitted that she had engaged in that conduct several times in the previous few months. Respondent further admitted to stealing forty (40) tablets of cephalexin 500mg and eight-hundred (800) tablets of hydrocodone/acetaminophen 10/325mg. Respondent stated that

she was addicted to those medications.

FIRST CAUSE FOR DISCIPLINE

(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, and/or Corruption)

15. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption when she stole drugs from the pharmacy where she was employed. The circumstances of Respondent's conduct are set forth above in Paragraph 14.

SECOND CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

16. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) and section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent possessed controlled substances without a prescription. The circumstances of Respondent's conduct are set forth above in Paragraph 14.

THIRD CAUSE FOR DISCIPLINE

(Illegal Furnishing of Dangerous Drugs)

17. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) and section 4059, subdivision (a) of the Code in that Respondent illegally furnished dangerous drugs to another person. The circumstances of Respondent's conduct are set forth above in Paragraph 14.

FOURTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit, or Subterfuge)

18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) of the Code and Health and Safety Code section 11173, subdivision (a), in that Respondent obtained controlled substances by fraud, deceit, subterfuge, and/or the concealment of a material fact. The circumstances of Respondent's conduct are set forth above in Paragraph 14.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

19. Respondent is subject to disciplinary action under section 4301 of the Code in that Respondent engaged in unprofessional conduct when she stole drugs from the pharmacy where she was employed. The circumstances of Respondent's conduct are set forth above in Paragraph 14.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 70267 issued to Jennifer Lynne Martinez;

2. Ordering Jennifer Lynne Martinez 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: 6/13/16

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

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