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

11 In the Matter of the Accusation Against:

Case No. 5955

12 **DEBORAH LYNN SOWERS**
13 **1027 Rock Springs Rd**
14 **San Marcos, CA 92069**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
77563

16 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 July 30, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 77563 to Deborah Lynn Sowers (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein, expired on April 30, 2017, and has not been 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 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a license
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

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

17 ...

18 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
19 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.

20 (g) Knowingly making or signing any certificate or other document that falsely
represents the existence or nonexistence of a state of facts.

21 (h) The administering to oneself, of any controlled substance, or the use of
22 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
23 dangerous or injurious to oneself, to a person holding a license under this chapter,
24 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.

25 ...

26
27 (j) The violation of any of the statutes of this state, of any other state, or of
28 the United States regulating controlled substances and dangerous drugs.

1 (k) The conviction of more than one misdemeanor or any felony involving the
2 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
3 or any combination of those substances.

4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of a
6 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
7 States Code regulating controlled substances or of a violation of the statutes of this
8 state regulating controlled substances or dangerous drugs shall be conclusive evidence
9 of unprofessional conduct. In all other cases, the record of conviction shall be
10 conclusive evidence only of the fact that the conviction occurred. The board may
11 inquire into the circumstances surrounding the commission of the crime, in order to fix
12 the degree of discipline or, in the case of a conviction not involving controlled
13 substances or dangerous drugs, to determine if the conviction is of an offense
14 substantially related to the qualifications, functions, and duties of a licensee under this
15 chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere
16 is deemed to be a conviction within the meaning of this provision. The board may take
17 action when the time for appeal has elapsed, or the judgment of conviction has been
18 affirmed on appeal or when an order granting probation is made suspending the
19 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
20 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
21 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
22 information, or indictment.

23 ...

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

...

7. Section 4059 of the Code states:

(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. 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.

...

8. 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

1 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
2 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
3 section shall not apply to the possession of any controlled substance by a
4 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
5 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
6 practitioner, or physician assistant, when in stock in containers correctly labeled
7 with the name and address of the supplier or producer.

8 Nothing in this section authorizes a certified nurse-midwife, a nurse
9 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
10 stock of dangerous drugs and devices.

11 9. Health and Safety Code section 11170 states that no person shall prescribe, administer,
12 or furnish a controlled substance for himself.

13 COST RECOVERY

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

18 DRUGS

19 11. Provigil is the brand name for modafinil, a Schedule IV controlled substance pursuant
20 to Health and Safety Code section 11057 (f)(3), and a dangerous drug pursuant to Business and
21 Professions Code section 4022.

22 12. Nuvigil is the brand name for armodafinil, a Schedule IV controlled substance pursuant
23 to Health and Safety Code section 11057(f)(3) and a dangerous drug pursuant to Business and
24 Professions Code section 4022.

25 FACTUAL ALLEGATIONS

26 13. At all times relevant herein, Respondent was employed as a lead pharmacy technician
27 at CVS Pharmacy in San Diego, California.

28 14. On or about the early morning of January 16, 2016, the Carlsbad Police Department
conducted a traffic enforcement stop on a vehicle driving without lights. Upon contact with
Respondent, the officer immediately noticed a strong smell of alcohol emitting from Respondent,
her speech was slow and slurred, and her eyes were red and glassy. Respondent admitted to

1 consuming alcohol earlier that evening. Respondent submitted to field sobriety tests, which she
2 performed poorly. Based on her objective symptoms of intoxication, Respondent provided two
3 Preliminary Alcohol Screening (PAS), which were analyzed with a .190 percent and .192 percent.
4 Respondent was then placed under arrest for driving under the influence of alcohol and/or drugs.
5 During booking, Respondent provided a chemical breath sample, which was subsequently analyzed
6 with a .15 percent.

7 15. In or about January 2016 - July 2016, Respondent diverted and stole Nuvigil, Provigil,
8 and a Z-pak (azithromycin). Respondent accomplished this by taking a couple of tablets at a time.
9 Additionally, Respondent submitted unauthorized duplicate copies of her Nuvigil prescriptions on
10 April 5, 2016 June 1, 2016 and June 21, 2016, to be filled at two different CVS pharmacies.

11 16. On or about April 4, 2016, in a criminal proceeding entitled *The People of the State of*
12 *California v. Deborah Lynn Sowers*, in San Diego County Superior Court, case number
13 CN355532, Respondent was convicted on her plea of guilty to violating Vehicle Code section
14 23152, subdivision (a), (driving under the influence of alcohol/drugs), a misdemeanor. Pursuant to
15 a plea agreement, the charge of violating Vehicle Code section 23152, subdivision (b), (driving
16 with a blood alcohol concentration (BAC) of .08 percent or higher) was dismissed. Respondent
17 admitted and the court found true the special allegation that her blood alcohol concentration
18 (BAC) was .15 percent or more, within the meaning of Vehicle Code section 235578. As a result
19 of the conviction, Respondent was granted summary probation for five (5) years. Respondent was
20 ordered to attend and complete a first offender DUI program, enroll and complete the MADD
21 Victim Impact Panel Session, pay fees and fines, and comply with the terms of DUI probation.

22 17. After an investigation into Respondent's drug diversion activities, CVS terminated
23 Respondent and conducted an audit of drugs. On August 15, 2016, CVS submitted a DEA 106
24 form, reporting losses of Provigil 200mg, 107 tablets; Nuvigil 150mg, 52 tablets; and Nuvigil
25 250mg, 103 tablets; during the time period when Respondent was a lead pharmacy technician at
26 CVS.

27 18. On February 15, 2017, in a criminal proceeding entitled *The People of the State of*
28 *California v. Deborah Lynn Sowers*, in San Diego County Superior Court, case number

1 CN362940, Respondent was convicted on her plea of guilty to violating Penal Code § 508,
2 (fraudulent appropriation by clerk, agent or employee with money in excess of \$950), a
3 misdemeanor. Pursuant to Respondent's plea agreement, the court dismissed the additional count
4 of grand theft of personal property (Penal Code, § 487(a)). As a result of the conviction,
5 Respondent was granted three (3) years summary probation. Respondent was ordered to be
6 committed to the custody of the sheriff for one (1) day, with credit for one day served, pay fees,
7 fines and restitution, and comply with the terms of probation, which included a Fourth Amendment
8 waiver, and a stay away order for CVS.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Dishonest Acts)**

11 19. Respondent has subjected her registration to disciplinary action under section 4301,
12 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
13 or corruption, in that Respondent stole controlled substances from her employer, as detailed in
14 paragraphs 13 through 18, above, which are incorporated herein by reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcohol and Controlled Substances in Dangerous Manner)**

17 20. Respondent has subjected her registration to disciplinary action under section 4301,
18 subdivision (h) of the Code in that Respondent administered to herself controlled substances and
19 used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself or
20 the public, in that she operated a motor vehicle on January 16, 2016, while significantly impaired
21 by alcohol as detailed in paragraphs 13 through 18, above, and which are incorporated herein by
22 reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Criminal Convictions)**

25 21. Respondent has subjected her license to discipline under sections 490 and 4301,
26 subdivision (l) of the Code in that she was convicted of crimes that are substantially related to the
27 qualifications, duties, and functions of a pharmacy technician, as detailed in paragraphs 16 and 18,
28 above, and which are incorporated herein by reference.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violating Statutes Regulating Controlled Substances)**

3 22. Respondent has subjected her registration to disciplinary action under section 4301,
4 subdivision (j) of the Code for violation of Health and Safety Code section 11170, in that
5 Respondent illegally obtained and administered to herself controlled substances, and Health and
6 Safety Code section 11350, in that Respondent possessed controlled substances without
7 prescriptions, as detailed in paragraphs 13 through 18, above, and which are incorporated herein
8 by reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Violating Laws Governing Pharmacy)**

11 23. Respondent has subjected her registration to disciplinary action under section 4301,
12 subdivision (o) of the Code for violation of Code sections 4059 and 4060, in that Respondent
13 illegally furnished controlled substances to herself and illegally possessed controlled substances
14 without legitimate prescriptions, and Code section 4327, in that Respondent sold and dispensed
15 drugs while under the influence of controlled substances, as detailed in paragraphs 13 through 18,
16 above, and which are incorporated herein by reference.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct)**

19 24. Respondent has subjected her registration to disciplinary action under section 4301, of
20 the Code in that Respondent committed unprofessional conduct.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 77563,
25 issued to Deborah Lynn Sowers;

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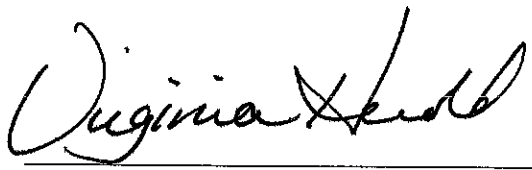
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2. Ordering Deborah Lynn Sowers to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 7/17/17



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

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