

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ALAN MACINA
Deputy Attorney General
4 State Bar No. 233540
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9083
7 Facsimile: (619) 645-2031
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 6057

12 **TRACY L. REES**
13 **43347 Pledger Ct.**
14 **Hemet, CA 92544**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
32511

16 Respondent.

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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 March 2, 2000, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 32511 to Tracy L. Rees (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2019, 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 unless otherwise indicated.

4. Section 4022 of the Code states

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, 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.

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

(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.

5. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

STATUTORY PROVISIONS

6. 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 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.

...

(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,

1 or to any other person or to the public, or to the extent that the use impairs the
2 ability of the person to conduct with safety to the public the practice authorized
3 by the license.

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

6 7. Section 4059 of the Code states:

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

12 8. Section 4060 of the Code states:

13 A person shall not possess any controlled substance, except that furnished to
14 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
16 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
17 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
18 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
19 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
20 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
21 This section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
23 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled
25 with the name and address of the supplier or producer.

26 This section authorizes a certified nurse-midwife, a nurse practitioner, a
27 physician assistant, or a naturopathic doctor, to order his or her own stock of
28 dangerous drugs and devices.

9. Section 11170 of the California Health and Safety Code states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

10. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

...
(b) Considering suspension or revocation of a license under Section 490.
Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

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REGULATIONS

11. California Code of Regulations, title 16, section 1769, subdivision (b), states:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

12. 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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COST RECOVERY

13. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

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DRUGS AT ISSUE

14. Phentermine, the generic name for Adiplex-P, is a Schedule IV controlled substance under California Health and Safety Code section 11057, subdivision (f)(4), and is classified as a dangerous drug under Business and Professions Code section 4022. Phentermine tablets are indicated for obesity and to promote weight loss.

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FACTS

15. Respondent admitted taking ten to fifteen phentermine tablets over the course of about a year until confronted in July 2016. She admitted to consuming the pills at work while putting stock away at the pharmacy where she worked as a technician. She agreed that taking the pills was against store policy and illegal.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Dishonesty)

16. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (f) for committing an act involving moral turpitude, dishonesty, fraud, or deceit in that during a one-year period, while Respondent was employed as a pharmacy technician at CVS Pharmacy, Respondent diverted numerous controlled substances tablets as described in paragraph 17 above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Danger to the Public)

17. Respondent is subject to disciplinary action under Business & Professions Code section 4301, subdivision (h) by administration to herself of a controlled substance or dangerous drug. Respondent admitted that she self-administered a controlled substance in a manner dangerous to herself as described in paragraph 17 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Functioning under the Influence of a Controlled Substance)

18. Respondent is subject to disciplinary action under Business & Professions Code section 4301, subdivision (j) self-administering controlled substances. Respondent admitted that she consumed a controlled substance while working as a pharmacy technician as described in paragraph 17 above.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without a Prescription)

19. Respondent is subject to disciplinary action under Business & Professions Code section 4060 by self-administration of a controlled substance or dangerous drug without a prescription. Respondent self-administered phentermine and did not have a prescription as described in paragraph 17 above.

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FIFTH CAUSE FOR DISCIPLINE

(Prescribing Controlled Substance for Self)

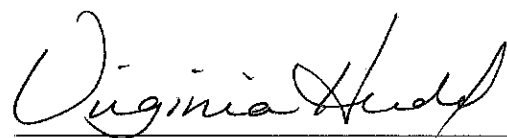
20. Respondent is subject to disciplinary action under section Health & Safety Code section 11170 by self-administration of a controlled substance or dangerous drug. Respondent furnished phentermine for herself as described in paragraph 17 above.

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 32511, issued to Tracy L. Rees;
2. Ordering Tracy L. Rees 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: 3/23/17


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

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