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Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 3147
TERESA MARIE BROCK **a.k.a. TERESA BROCK** P.O. Box 496 Armona, CA 93202 Pharmacy Technician License No. TCH 18119 Respondent.	**DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 3, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3147 (Accusation) against Teresa Marie Brock (Respondent) before the Board of Pharmacy.

2. On or about January 9, 1996, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 18119 (License) to Respondent. The License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

3. On or about March 7, 2008, Donna Parker, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.

3147, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

P.O. Box 496
Armona, CA 93202.

A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation.

7. Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in the Accusation are true.

9. The total cost for investigation and enforcement in connection with the Accusation are $3,063.75 as of June 18, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Teresa Marie Brock has subjected her Pharmacy Technician License No. TCH 18119 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4301, subdivision (f) in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit or corruption;

b. Business and Professions Code section 4301, subdivision (h) in that the Respondent self administered a controlled substance;

c. Business and Professions Code section 4031, subdivision (l) in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee;

d. Business and Professions Code section 4301, subdivision (j) in that Respondent violated several Controlled Substances or Dangerous Drugs Statutes;

e. Business and Professions Code section 4301, subdivision (o) in that Respondent violated Pharmacy Laws;

f. Business and Professions Code section 4301, subdivision (o) in that the Respondent worked as a pharmacist technician while under the influence of a dangerous drug in violation of Code section 4327.

g. Business and Professions Code section 4301, subdivision (p) in that Respondent committed acts that would have warranted denial of a license.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 18119, heretofore issued to Respondent Teresa Marie Brock, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on September 17, 2008.

It is so ORDERED August 18, 2008

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kenneth H. Schell
KENNETH H. SCHELL
Board President

30484667.wpd
DOJ docket number:SA2008100261

Attachment:

Exhibit A: Accusation No.3147

Exhibit A

Accusation No. 3147

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **TERESA MARIE BROCK** **a.k.a TERESA M. BROCK** P. O. Box 496 Armona, California 93202 Pharmacy Technician Registration No. TCH 18119 Respondent.	Case No. 3197 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about January 9, 1996, the Board issued Pharmacy Technician Registration Number TCH 18119 (License) to Teresa Marie Brock a.k.a. Teresa M. Brock (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

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JURISDICTION

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

4. Code section 4202, in pertinent part, states:

(a) The board may issue a pharmacy technician license to an individual . . ..

. . . .

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

. . . .

5. Code section 4300, in pertinent part, 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.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .

. . . .

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6. Code section 4301 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.

. . . .

(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 or of the United States regulating controlled substances and dangerous drugs.

. . . .

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

. . . .

(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.

(p) Actions or conduct that would have warranted denial of a license.

. . . .

7. Code section 4059, subd. (a), 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.

8. Code section 4060, in pertinent part, states:

> No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, 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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, 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.

. . . .

9. Health and Safety Code section 11170 states, "No person shall prescribe, administer, or furnish a controlled substance for himself."

10. Health and Safety Code section 11173, subd. (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.

11. Health and Safety Code section 11350, subd. (a) states:

> Except as otherwise provided in this division, every person who possess (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

12. Code section 4022 defines Dangerous Drug. Both hydrocodone / acetaminophen and carisprodol are Dangerous Drugs.

13. Health and Safety Code section 11056 lists Scheduled III controlled substances. Hydrocodone / acetaminophen is listed as a Scheduled III controlled substance.

14. Code section 125.3 states, 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.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Moral Turpitude)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) in that Respondent, while employed as a pharmacist technician at a Wal-Mart pharmacy, committed an act involving moral turpitude, dishonesty, fraud, deceit or corruption by unlawfully taking a Scheduled III controlled substance, namely hydrocodone / acetaminophen tablets, and a Dangerous Drug, namely carisprodol tablets, from the pharmacy for personal use between March of 2007 and June of 2007.

SECOND CAUSE FOR DISCIPLINE

(Self Administration of a Controlled Substance)

16. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) in that the Respondent on multiple occasions between March of 2007 and June of 2007 self administered a controlled substance, namely hydrocodone / acetaminophen.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Crime)

17. Respondent is subject to disciplinary action under Code section 4031, subdivision (l) in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee under Chapter 9, Division 2 of the Code. The circumstances are as follows:

18. On or about June 4, 2007, Respondent was arrested in Hanford, California by the Hanford Police Department for violating Penal Code section 503 [embezzlement]. Respondent was arrested for taking controlled substances and dangerous drugs from a Wal-Mart pharmacy for personal use without legal authority to do so, as detailed above in paragraph 15. On or about July 25, 2007, a criminal complaint was filed against Respondent in the case entitled the *People v. Teresa Marie Brock* (Super. Ct., Kings County, 2007, No. 07CM2430), charging Respondent with a felony for violating Penal Code section 487, subd. (a) [grand theft]. On or about September 10, 2007, Respondent plead guilty to one count of violating Penal Code section

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487, subd. (a) [grand theft], a felony, and was convicted. Respondent was sentenced to five (5) years formal probation.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of Controlled Substances or Dangerous Drugs Statutes)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j) in that the circumstances detailed above in paragraphs 15 - 18 indicate that Respondent violated Code sections 4059, subd. (a), and 4060; and Health and Safety Code sections 11170, 11173, subd. (a), and 11350, subd. (a).

FIFTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Laws)

20. Respondent is subject to disciplinary action under Code section 4301, subdivision (o) in that the circumstances detailed above in paragraphs 15 - 19 indicate that Respondent violated Code sections 4059, subd. (a), and 4060.

SIXTH CAUSE FOR DISCIPLINE

(Working as a Technician while under the Influence)

21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o) in that the Respondent worked as a pharmacist technician while under the influence of a dangerous drug in violation of Code section 4327. The circumstances are as follows:

22. On multiple dates between March of 2007 and June of 2007, while on duty as a pharmacist technician at a Wal-Mat pharmacy, Respondent dispensed or compounded drugs while under the influence of hydrocodone / acetaminophen and / or carisprodol.

SEVENTH CAUSE FOR DISCIPLINE

(Actions that would have warranted denial of a license)

23. Respondent is subject to disciplinary action under Code section 4301, subdivision (p) in that the circumstances detailed above in paragraphs 15 - 22 indicate that Respondent committed acts that would have warranted denial of a license.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 18119, issued to Teresa Marie Brock a.k.a. Teresa M. Brock.

2. Ordering Teresa Marie Brock a.k.a. Teresa M. Brock to pay the Board 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: 3/3/08

VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

SA2006102705

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