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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 SARAH LYNN MONTAGUE
1359 E. 35th Street
14 San Bernardino, CA 92404
15 Pharmacy Technician Registration
No. TCH 39166

16
17 Respondent.

Case No. 3169

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about January 1, 2008, Complainant Virginia Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 3169 against Sarah Lynn Montague (Respondent) before the Board of
22 Pharmacy.

23 2. On or about August 21, 2001, the Board of Pharmacy (Board) issued
24 Pharmacy Technician Registration No. TCH 39166 to Respondent. The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2009, unless renewed.

27 3. On or about September 25, 2008, Denise Hosman, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3169,

1 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
2 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
3 was and is: 1359 E. 35th Street, San Bernardino, CA 92404. A copy of the Accusation is
4 attached as Exhibit A, and is incorporated herein by reference.

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

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

8 (c) The respondent shall be entitled to a hearing on the merits if the
9 respondent files a notice of defense, and the notice shall be deemed a specific
10 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.

11 6. Respondent failed to file a Notice of Defense within 15 days after service
12 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
13 Accusation No. 3169.

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

15 (a) If the respondent either fails to file a notice of defense or to appear at
16 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
17 any notice to respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board
19 finds Respondent is in default. The Board will take action without further hearing and, based on
20 the evidence on file herein, finds that the allegations in Accusation No. 3169 are true.

21 9. The total cost for investigation and enforcement in connection with the
22 Accusation are \$3,230.25 as of November 7, 2008.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Sarah Lynn Montague
25 has subjected her Pharmacy Technician Registration to discipline.

26 2. A copy of the Accusation is attached.

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

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

3 a. Respondent is subject to disciplinary action under Business and
4 Professions Code (Code) section 4301(j) in conjunction with Code section 4059(a) in that
5 she furnished dangerous drugs without a valid prescription from a physician, dentist,
6 podiatrist, optometrist, veterinarian or naturopathic doctor to her co-worker when she
7 fraudulently authorized prescription refills for her co-worker.

8 b. Respondent is subject to disciplinary action under Code section
9 4301(j) in conjunction with Health and Safety Code section 11173(a) for obtaining
10 controlled substances by fraud, deceit, misrepresentation or subterfuge, when Respondent
11 and her co-worker fraudulently authorized prescriptions for each other that had not been
12 prescribed or authorized by a doctor.

13 c. Respondent is subject to disciplinary action under Code section
14 4301(j) in conjunction with Code section 4060 in that she possessed controlled
15 substances without a valid prescription or authorization.

16 d. Respondent is subject to disciplinary action under Code section
17 4301(f) for acts of dishonesty, fraud or deceit in that she unlawfully prescribed controlled
18 substances for her co-worker and conspired with her co-worker in order to gain
19 possession of controlled substances.

20 e. Respondent is subject to disciplinary action under Code section
21 4301(g) in conjunction with Health and Safety Code section 11173(b) for unprofessional
22 conduct in that she knowingly made and signed documents that falsely represented the
23 existence of facts when she fraudulently authorized prescription refills for her co-worker.

24 f. Respondent is subject to disciplinary action under Code section
25 4301(o) for conspiracy to violate the provisions of the regulations governing pharmacy by
26 conspiring with her co-worker to falsify prescriptions and refills for controlled substances
27 without prescriber authorization.

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ORDER


IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 39166, heretofore issued to Respondent Sarah Lynn Montague, 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 February 5, 2009.

It is so ORDERED January 6, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
KENNETH H. SCHELL
Board President

80305847.wpd
DOJ docket number:SD2008800957

Attachment:

Exhibit A: Accusation No.3169

Exhibit A
Accusation No. 3169

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3169

13 SARAH LYNN MONTAGUE
1359 E. 35th Street
14 San Bernardino, CA 92404

A C C U S A T I O N

15 Pharmacy Technician Registration No.
TCH 39166

16 Respondent.
17

18
19 Complainant alleges:

20 PARTIES

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

23 2. On or about August 21, 2001, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 39166 to Sarah Lynn Montague (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on May 31, 2009, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws of the Business and Professions
4 Code (Code).

5 4. Section 4300(a) of the Code states in pertinent part that every license issued may
6 be suspended or revoked.

7 5. Section 4301 of the Code states in pertinent part:

8 The board shall take action against any holder of a license who is guilty of
9 unprofessional conduct or whose license has been procured by fraud or
10 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
11 is not limited to, any of the following:

12 (f) The commission of any act involving moral turpitude, dishonesty,
13 fraud, deceit, or corruption, whether the act is committed in the course of relations
14 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in
20 or abetting the violation of or conspiring to violate any provision or term of this
21 chapter or of the applicable federal and state laws and regulations governing
22 pharmacy, including regulations established by the board or by any other state or
23 federal regulatory agency.

24 6. Section 4021 of the Code states "Controlled substance" means any
25 substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and
26 Safety Code."

27 7. Section 4022 of the Code states

28 "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.

1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a _____," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to
4 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 8. Section 4026 of the Code states that "'Furnish' means to supply by any
6 means, by sale or otherwise."

7 9. Section 4059(a) of the Code states, in pertinent part, that a person may not
8 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
9 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall
11 possess any controlled substance, except that furnished to a person upon the prescription of a
12 physician, dentist, podiatrist, or veterinarian.

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

17 12. Health and Safety Code section 11173(a) provides, in pertinent part, that
18 no person shall obtain, or attempt to obtain controlled substances by fraud, deceit,
19 misrepresentation, or subterfuge.

20 13. Health and Safety Code section 11173(b) provides, in pertinent part, that
21 no person shall make a false statement in any prescription, order, report, or record, required by
22 this division.

23 **DRUGS**

24 14. At all times material herein, Norco was and is a trade name for the generic
25 drug hydrocodone with acetaminophen which is designated by Health and Safety Code section
26 11056(e)(4) as a narcotic drug and a Schedule III controlled substance, and by Business and
27 Professions Code section 4022 as a dangerous drug, and is used as a narcotic analgesic in the
28 relief of pain.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Furnishing Dangerous Drugs Without a Prescription)**

3 21. Respondent is subject to disciplinary action under section 4301(j) in
4 conjunction with section 4059(a) in that she furnished dangerous drugs without a valid
5 prescription from a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor
6 to TCH L.A. when she fraudulently authorized prescription refills for TCH L.A. as more
7 particularly alleged in paragraph 18 above and incorporated herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Subterfuge)**

10 22. Respondent is subject to disciplinary action under section 4301(j) in
11 conjunction with H&S Code section 11173(a) for obtaining controlled substances by fraud,
12 deceit, misrepresentation or subterfuge, when Respondent and TCH L.A. fraudulently authorized
13 prescriptions for each other that had not been prescribed or authorized by a doctor and as more
14 particularly alleged in paragraphs 18 through 20 above and incorporated herein by reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Possession of Controlled Substances Without a Prescription)**

17 23. Respondent is subject to disciplinary action under section 4301(j) in
18 conjunction with section 4060 in that she possessed controlled substances without a valid
19 prescription or authorization, as more particularly alleged in paragraphs 18 through 20 above and
20 incorporated herein by reference.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct: Act of Dishonesty, Fraud and Deceit)**

23 24. Respondent is subject to disciplinary action under section 4301(f) for acts
24 of dishonesty, fraud or deceit in that she unlawfully prescribed controlled substances for TCH
25 L.A. and conspired with TCH L.A. in order to gain possession of controlled substances as more
26 particularly alleged in paragraphs 18 and 20 above and incorporated herein by reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Signing Documents that
3 Falsely Represents the Existence of a State of Facts)

4 25. Respondent is subject to disciplinary action under section 4301(g) in
5 conjunction with H&S Code section 11173(b) for unprofessional conduct in that she knowingly
6 made and signed documents that falsely represented the existence of facts when she fraudulently
7 authorized prescription refills for TCH L.A. as more particularly alleged in paragraph 18 above
8 and incorporated herein by reference.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 (Conspiring to Falsify Prescriptions)

11 26. Respondent is subject to disciplinary action under section 4301(o) for
12 conspiracy to violate the provisions of the regulations governing pharmacy by conspiring with
13 TCH L.A. to falsify prescriptions and refills for controlled substances without prescriber
14 authorization as more particularly alleged in paragraphs 18 through 20 above and incorporated
15 herein by reference.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH
20 39166, issued to Sarah Lynn Montague.

21 2. Ordering Sarah Lynn Montague to pay the Board of Pharmacy the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 125.3; and

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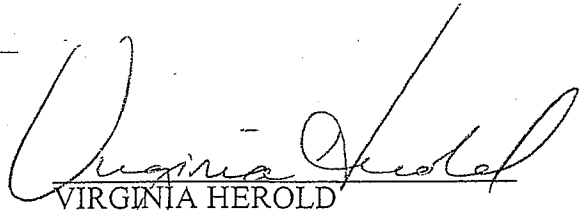
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/22/08



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

SD2008800957
80249357.wpd

DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

Case Name: Accusation Against: Sarah Lynn Montague

Board of Pharmacy Case No. 3169

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 25, 2008, I served the attached **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

Sarah Lynn Montague
1359 E. 35th Street
San Bernardino, CA 92404

**Certified Article No.
7008 0150 0001 0694 4883**

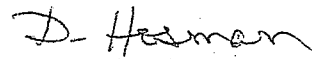
Courtesy copies via 1st class mail only to:

Board of Pharmacy
Virginia K. Herold
Susan Cappello
Veronica Hagen
1625 North Market Blvd., Suite N-219
Sacramento, CA 95834

I declare under penalty of perjury under the laws of the State of California, the foregoing is true and correct and that this declaration was executed on September 25, 2008, at San Diego, California.

D. Hosman

Typed Name



Signature