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

11 In the Matter of the Accusation Against:

Case No. 3313

12
13 **KIMBERLY ANN HART**

DEFAULT DECISION AND ORDER

14
15 Respondent.

[Gov. Code, §11520]

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18 **FINDINGS OF FACT**

19 1. On or about April 16, 2009, Complainant Virginia Herold, in her official capacity as
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 3313 against Kimberly Ann Hart (Respondent) before the Board of Pharmacy.

22 2. On or about June 18, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 76431 to Respondent. The Pharmacy Technician License expired
24 on February 28, 2009, and has not been renewed.2.1. On or about April 24, 2009, Praveen K.
25 Singh, an employee of the Department of Justice, served by Certified and First Class Mail a copy
26 of the Accusation No. 3313, Statement to Respondent, Notice of Defense, Request for Discovery,
27 and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's addresses of
28 record with the Board, which were and are:

1 P.O. Box 75
2 Valley Springs, CA 95252

3
4 and

5
6 3463 Hart Vickson Lane
7 Valley Springs, CA 95252.

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

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

11 On or about April 28, 2009, the aforementioned documents were returned by the U.S.
12 Postal Service marked "Not Deliverable as Addressed" and "Unable to Forward". Business and
13 Professions Code section 118 states, in pertinent part:

14 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
15 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
16 order of a court of law, or its surrender without the written consent of the board, shall not, during
17 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the license on any such ground.

21 4. Government Code section 11506 states, in pertinent part:

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

26 Respondent failed to file a Notice of Defense within 15 days after service upon her of the
27 Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3313.

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5. California 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.

6. 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 Accusation No. 3313 are true.

7. The total cost for investigation and enforcement in connection with the Accusation are \$3,706.50 as of August 27, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kimberly Ann Hart has subjected her Pharmacy Technician License No. TCH 76431 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(f) – Fraudulent Acts.

b. Business and Professions Code section 4301(j) and (o) – Violation of State and Federal Statutes.

c. Business and Professions Code section 4301(h) – Unlawful Self-Administration of a Controlled Substance.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 76431, heretofore issued to Respondent Kimberly Ann Hart, 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

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on February 24, 2010.

It is so ORDERED January 25, 2010.

Kenneth H. Schell

KENNETH H. SCHELL, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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Exhibit A: Accusation No.3313

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12 In the Matter of the Accusation Against:

Case No. 3313

13 **KIMBERLY ANN HART**
P.O. Box 75
14 Valley Springs, CA 95252
15 3463 Hart Vickson Lane
Valley Springs, CA 95252
16 Pharmacy Technician License No. TCH 76431

ACCUSATION

Respondent.

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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 June 18, 2007, the Board of Pharmacy issued Pharmacy
24 Technician License Number TCH 76431 to Kimberly Ann Hart (Respondent). Ms. Hart's
25 pharmacy technician license was in full force and effect at all times relevant to the charges
26 brought herein and expired on February 28, 2009, unless renewed.

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JURISDICTION

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

5 4. Section 4300 of the Code states, in pertinent part:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

14 (4) Revoking his or her license.

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

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

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

23

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

27

28 (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 any other state, or of
the United States regulating controlled substances and dangerous drugs.

.....

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in
2 or abetting the violation of or conspiring to violate any provision or term of this
3 chapter or of the applicable federal and state laws and regulations governing
4 pharmacy, including regulations established by the board or by any other state or
5 federal regulatory agency.

6 6. Section 4060 of the Code states, in pertinent part:

7 No person shall possess any controlled substance, except that furnished to
8 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
10 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
11 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
12 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
13 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
14 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

15 7. Health and Safety Code section 11209, subdivision (a) states:

16 (a) No person shall deliver Schedule II, III, or IV controlled substances to a
17 pharmacy or pharmacy receiving area, nor shall any person receive controlled
18 substances on behalf of a pharmacy unless, at the time of delivery, a pharmacist or
19 authorized receiving personnel signs a receipt showing the type and quantity of
20 the controlled substances received. Any discrepancy between the receipt and the
21 type or quantity of controlled substances actually received shall be reported to the
22 delivering wholesaler or manufacturer by the next business day after delivery to
23 the pharmacy.

24 8. Section 118, subdivision (b), of the Code provides that the expiration of a
25 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
26 period within which the license may be renewed, restored, reissued or reinstated.

27 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
28 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.

CONTROLLED SUBSTANCES AT ISSUE

10 10. "Vicodin", "Norco", and "Lortab" are brand names for hydrocodone with
11 acetaminophen, which is an opiate and a Schedule III controlled substance as designated by
12 Health & Safety Code section 11056, subdivision (e)(4).

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1 11. "Vicoprofen", a brand name for hydrocodone with ibuprofen, is an opiate
2 and a Schedule III controlled substance as designated by Health & Safety Code section 11056,
3 subdivision (e)(4).

4 12. "Oxycontin", a brand name for morphine, is an opiate and a Schedule II
5 controlled substance as designated by Health & Safety Code section 11055, subdivision (1)(m).

6 13. "Oxycodone" is an opiate and a Schedule II controlled substance as
7 designated by Health and Safety Code section 11055(b)(1)(n).

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B&P SECTION 4022	CONTROLLED SUBSTANCE PER H&S CODE	INDICATIONS FOR USE
Vicodin, Norco, Lortab	Hydrocodone/acetaminophen	Yes	Yes: Schedule III - H&S 11056(e)(4)	Pain
Vicoprofen	Hydrocodone/ibuprofen	Yes	Yes: Schedule III- 11056(e)(4)	Pain
Oxycontin	Morphine	Yes	Yes: Schedule II- 11055(1)(m)	Pain
Oxycodone	Oxycodone	Yes	Yes: Schedule II- 11055(1)(n)	Pain

17 FIRST CAUSE FOR DISCIPLINE
18 (Fraudulent Acts)

19 14. Respondent is subject to disciplinary action under section 4301,
20 subdivision (f) in that Ms. Hart engaged in unprofessional conduct in that she conducted acts
21 involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as
22 follows:

23 15. During December of 2007, and on multiple occasions, the exact dates of
24 which are unknown, Ms. Hart fraudulently obtained approximately 531 tablets of hydrocodone-
25 containing medications (Vicodin, Norco, Lortab and Vicoprofen), as well as 200 tablets of
26 Oxycodone, from Rite Aid pharmacy, while on duty as a registered pharmacy technician in
27 violation of law.

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SECOND CAUSE FOR DISCIPLINE
(Violation of State/Federal Statutes)

16. Respondent is subject to disciplinary action under section 4301, subsections (j) and (o), in that she violated Bus. & Prof. Code section 4060 and/or Health & Safety Code section 11209, subdivision (a).

17. During December of 2007, and on multiple occasions, the exact dates of which are unknown, Respondent fraudulently appropriated approximately 531 tablets of hydrocodone-containing medications (Vicodin, Norco, Lortab, and Vicoprofen) as well as 200 tablets of oxycodone, from Rite Aid Pharmacy. In addition, Respondent was in possession the stolen hydrocodone and oxycodone, without a prescription for those controlled substances in violation of law.

THIRD CAUSE FOR DISCIPLINE
(Unlawful Self-Administration of a Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that she administered a controlled substance to herself.

19. During December of 2007, and on multiple occasions, the exact dates of which are unknown, Respondent illegally administered to herself hydrocodone-containing medication, a Schedule III controlled substance and narcotic, in violation of law.

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