

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

In the Matter of the Accusation Against:

Case No. 3363

TAMMY LYNN DICARO
570 Dolan Road
Moss Landing, CA 95039

Original Pharmacy Technician
License No. TCH 64715

Respondent.

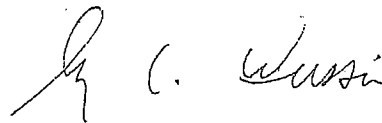
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on July 23, 2010.

It is so ORDERED on June 23, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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Deputy Attorney General
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3363

11 **TAMMY LYNN DICARO**
12 **570 Dolan Road**
13 **Moss Landing, CA 95039**

OAH No. 2010010444

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Pharmacy Technician License No. TCH 64715**

15 Respondent.

16 In the interest of a prompt and speedy resolution of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
18 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
19 submitted to the Board for approval and adoption as the final disposition of the Accusation.

20
21 PARTIES

- 22 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
23 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
24 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.
- 25 2. Tammy Lynn Dicaro (Respondent) is representing herself in this proceeding and has
26 chosen not to exercise her right to be represented by counsel.
- 27 3. On or about August 24, 2005, the Board of Pharmacy issued Pharmacy Technician
28 License No. TCH 64715 to Tammy Lynn Dicaro (Respondent). The License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3363 and will expire on
2 September 30, 2011, unless renewed.

3
4 JURISDICTION

5 4. Accusation No. 3363 was filed before the Board of Pharmacy (Board), Department of
6 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
7 statutorily required documents were properly served on Respondent on November 20, 2009.
8 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
9 No. 3363 is attached as exhibit A and incorporated herein by reference.

10
11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read and understands the charges and allegations in
13 Accusation No. 3363. Respondent also has carefully read and understands the effects of this
14 Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24
25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 3363, agrees that cause exists for discipline, and hereby surrenders her Pharmacy Technician
28 License No. TCH 64715 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 64715, issued to Respondent Tammy Lynn Dicaro, is surrendered and accepted by the Board of Pharmacy.

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1 14. The surrender of Respondent's Pharmacy Technician License and the acceptance of
2 the surrendered license by the Board shall constitute the imposition of discipline against
3 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
4 Respondent's license history with the Board.

5 15. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
6 as of the effective date of the Board's Decision and Order.

7 16. Respondent shall cause to be delivered to the Board both her wall license certificate
8 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

9 17. Respondent may not apply, reapply, or petition for any licensure or registration of the
10 Board for three (3) years from the effective date of the Decision and Order.

11 18. Respondent understands and agrees that if she ever applies for licensure or petitions
12 for reinstatement in the State of California, the Board shall treat it as a new application for
13 licensure. Respondent must comply with all the laws, regulations and procedures for licensure in
14 effect at the time the application or petition is filed, and all of the charges and allegations
15 contained in Accusation No. 3363 shall be deemed to be true, correct and admitted by Respondent
16 when the Board determines whether to grant or deny the application or petition.

17 19. Should Respondent ever apply or reapply for a new license or certification, or petition
18 for reinstatement of a license, by any other health care licensing agency in the State of California,
19 all of the charges and allegations contained in Accusation No. 3363 shall be deemed to be true,
20 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
21 proceeding seeking to deny or restrict licensure.

22 20. Respondent shall pay the Board its costs of investigation and enforcement in the
23 amount of \$5,493.50 prior to issuance of a new or reinstated license.

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DATED: 02-27-2010

TAMMY LYNN DICARO
Respondent

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 3/17/2010

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

5

Exhibit A

Accusation No. 3363

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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10 In the Matter of the Accusation Against:

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11 **TAMMY LYNN DICARO**
12 **570 Dolan Road**
13 **Moss Landing, CA 95039**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 64715**

15 **Respondent.**

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about August 24, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 64715 to Tammy Lynn Dicaro (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on September 30, 2011, unless renewed.

24 **JURISDICTION**

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

28 ///

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

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

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

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

26 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
27 of a licensee under this chapter.

28 ///

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

5 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
6 revoke a license when it finds that the licensee has been convicted of a crime substantially related
7 to the qualifications, functions or duties of the license.

8 9. California Code of Regulations, title 16, section 1770, states:

9 "For the purpose of denial, suspension, or revocation of a personal or facility license
10 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
11 crime or act shall be considered substantially related to the qualifications, functions or duties of a
12 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
13 licensee or registrant to perform the functions authorized by her license or registration in a
14 manner consistent with the public health, safety, or welfare."

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
18 controlled substance, except that furnished upon a valid prescription/drug order.

19 12. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
20 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
21 to have in his or her possession a drug secured by a forged prescription.

22 13. Health and Safety Code section 11150 provides, in pertinent part, that no person other
23 than an authorized prescriber shall write or issue a prescription.

24 14. Health and Safety Code section 11157 provides that no person shall issue a
25 prescription that is false or fictitious in any respect.

26 15. Health and Safety Code section 11170 provides that no person shall prescribe,
27 administer, or furnish a controlled substance for himself or herself.

28 ///

1 16. Health and Safety Code section 11173, subdivision (a), provides that no person shall
2 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
3 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
4 or subterfuge; or (2) by the concealment of a material fact.

5 17. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
6 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
7 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
8 prescription, or to possess a controlled substance obtained by such a prescription.

9 18. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
10 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
11 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

12 19. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
13 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
14 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
15 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

16 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation of the licensing
18 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

19 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

20 21. Section 4021 of the Code states:

21 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
22 11053) of Division 10 of the Health and Safety Code.”

23 22. Section 4022 of the Code states, in pertinent part:

24 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
25 except veterinary drugs that are labeled as such, and includes the following:

26 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
27 prescription,’ ‘Rx only,’ or words of similar import.

28 ...

“(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.”

23. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. Likewise, **Vicoprofen** is among the brand names for a compound of ibuprofen and **hydrocodone**, and is known in its generic form(s) by the name **Hydrocodone with Ibuprofen**. These are all narcotic drugs.

FACTUAL BACKGROUND

24. Between on or about December 14, 2007 and on or about May 15, 2008, Respondent was employed as a pharmacy technician at a Save Mart Pharmacy (# 746; PHY 48495) in Salinas, California. In that position, she had access to controlled substances and dangerous drugs.

25. Between on or about December 20, 2007 and on or about April 28, 2008, Respondent made use of that access to divert/steal controlled substances and dangerous drugs. Specifically, Respondent forged/created fraudulent prescription (refill) documents showing approvals for the authorization and/or refilling of controlled substance prescriptions that were never authorized by the indicated prescriber(s), and then signed for and picked up the drugs for self-use.

26. By this method, Respondent fraudulently created, filled, and acquired for self-use, at least five (5) prescriptions, for ninety (90) tablets each, of **Norco** or **Hydrocodone with APAP** (or other name brand) products, and at least seven (7) prescriptions, for ninety (90) tablets each, of **Vicoprofen** or **Hydrocodone with Ibuprofen** (or other name brand) products, a total of at least 1,080 tablets of narcotic controlled substances. Respondent admitted to taking the drugs for self-use, and admitted to the lack of prescriber authorization for the prescriptions/refills.

27. On or about December 10, 2008, Save Mart Pharmacy # 746 submitted a Report of Theft or Loss of Controlled Substances (DEA-106) to the Drug Enforcement Administration in which it listed losses from employee pilferage of 450 tablets of Norco or Hydrocodone with APAP, and 940 tablets of Vicoprofen or Hydrocodone with Ibuprofen.

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 28. Respondent is subject to discipline under section 4301(f) of the Code in that
4 Respondent, as described in paragraphs 24 to 27 above, committed numerous acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Creation/Signature of False Documents)

8 29. Respondent is subject to discipline under section 4301(g) of the Code in that
9 Respondent, as described in paragraphs 24 to 27 above, created and/or signed documents that
10 falsely represented the existence or nonexistence of a state of facts.

11 THIRD CAUSE FOR DISCIPLINE

12 (Conviction of Substantially Related Crime(s))

13 30. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
14 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
15 a substantially related crime, in that on or about September 23, 2008, in *People v. Tammy Dicaro*,
16 Case No. MS269187A in Monterey County Superior Court, Respondent was convicted as follows
17 of violating Business and Professions Code section 4324 (Forged Prescription), a misdemeanor:

18 a. On or about June 4, 2008, based on the conduct described in paragraphs 24 to
19 27 above, Respondent was contacted by Salinas Police, and admitted during police interview(s) to
20 forging prescriptions and/or refills in the name of her boyfriend and using his insurance to pay for
21 the filling of those prescriptions. She further admitted to taking the drugs for self-use.

22 b. On or about September 4, 2008, Respondent was charged by criminal complaint
23 with (1) Business and Professions Code section 4324 (Forged Prescription) and (2) Business and
24 Professions Code section 4329 (Nonpharmacist Acting as Pharmacist), both misdemeanors.

25 c. On or about September 23, 2008, Respondent pleaded nolo contendere and was
26 found guilty of Count One (Forgery of Prescription) a misdemeanor. Imposition of sentence was
27 suspended in favor of a conditional probation of three (3) years, terms and conditions including 5
28 days in jail or Work Alternative Program, retained jurisdiction over restitution, and fines and fees.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 31. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
5 in paragraphs 24 to 27 above, furnished to herself or another without a valid prescription, and/or
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substance)

9 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
11 in paragraphs 24 to 27 above, possessed, conspired to possess, and/or assisted in or abetted
12 possession of, a controlled substance, without a prescription.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

15 33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
16 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
17 24 to 27 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
18 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

19 SEVENTH CAUSE FOR DISCIPLINE

20 (Making, Uttering and/or Using False or Forged Prescriptions)

21 34. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
22 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
23 Respondent, as described in paragraphs 24 to 27 above, falsely made, altered, forged, uttered,
24 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a
25 (narcotic) drug, had in her possession a (narcotic) drug secured by a false, forged, fictitious or
26 altered prescription, or conspired and/or assisted in or abetted any of these acts.

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28 ///

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Issuance and/or Use of Invalid Prescription(s))

3 35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in
5 paragraphs 24 to 27 above, issued prescriptions without authority to do so, obtained or possessed
6 an invalid prescription, obtained or possessed a controlled substance by means of such invalid
7 prescription, or conspired and/or assisted in or abetted any of these acts.

8 NINTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 36. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 24 to 35 above, engaged in unprofessional conduct.

12
13 PRAYER

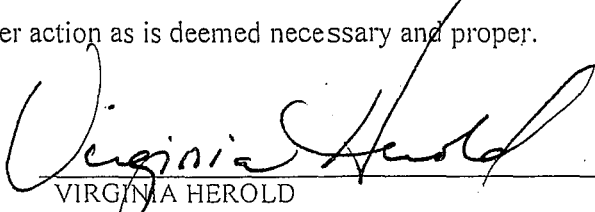
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64715,
17 issued to Tammy Lynn Dicaro (Respondent);

18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

21
22 DATED: 11/17/09


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

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