

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

In the Matter of the Accusation Against:

LISA M. SMITH
1165 Easy St.
Morgan Hill, CA 95037

Pharmacy Technician License No. TCH 79731

Respondent.

Case No. 3585

OAH No. 2011030866

DECISION

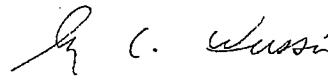
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on November 17, 2011.

It is so ORDERED October 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

BEFORE THE
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In the Matter of the Accusation Against:

LISA M. SMITH,

Pharmacy Technician Registration No. TCH
79731

Respondent.

Case No. 3585

OAH No. 2011030866

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 18, 2011.

Joshua A. Room, Deputy Attorney General, represented complainant.

Respondent was present and represented herself...

The matter was submitted on July 18, 2011.

FACTUAL FINDINGS

1. Virginia Herold made this accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On November 21, 2007, the Board issued Pharmacy Technician Registration Number TCH 79731 to Lisa M. Smith (respondent). The license is in full force and effect until May 31, 2013, unless otherwise renewed.

3. On January 28, 2009 and some time before that, respondent was employed as a pharmacy technician at a Longs Pharmacy in Morgan Hill, CA, where she had access to controlled substances and dangerous drugs.

4. From October 2008 to January 2009, respondent used her access to divert and steal controlled substances and dangerous drugs, including Norco 10/325 and generic Hydrocodone with APAP 10/325 products (Schedule III controlled substances).

5. The exact number of, and the full quantity of controlled substances diverted and stolen by respondent are not known, but in the course of the investigation conducted by Longs, respondent admitted to direct theft of 1,600 Norco tablets. Respondent further admitted to fraudulently creating ten fictitious refills and prescriber authorizations for Norco refills (60 tablets each) by inputting false information into the pharmacy system. Respondent admitted that all of the drugs taken were for her personal use.

6. A controlled substances audit of the Longs Pharmacy where respondent was employed, for the period of May 16, 2008 to January 22, 2009, revealed a shortage of 1,934 tablets of Norco and Hydrocodone with APAP (generic Norco).

7. The acts set forth in the Factual Findings above constitute acts involving moral turpitude, dishonesty, fraud and deceit.

8. Respondent made and signed documents falsely representing the existence and non-existence of material facts.

9. Respondent administered controlled substances to herself.

10. Respondent furnished to herself, without a valid prescription, a controlled substance.

11. Respondent possessed a controlled substance without a prescription.

12. Respondent refilled a prescription for a dangerous drug without prescriber authorization and forged a prescription for such a dangerous drug.

13. Respondent obtained a controlled substance by fraud, deceit, subterfuge and concealment of material facts.

14. Respondent engaged in unprofessional conduct.

15. Respondent experienced serious health issues that become critical in March 2005. She was diagnosed with pancreatitis and peptic ulcer disease. She was hospitalized for 15 days. She also had other health issues and personal issues that were debilitating. She had surgery in 2007, but continued to have serious health issues. She was on prescribed pain medication throughout late 2006 and early 2007. Respondent continued to be in both physical and emotional pain and the medication she was being prescribed was not enough to treat the pain successfully. Respondent reports that she "just snapped" and allowed her addiction to run her life. Once she was confronted with her misconduct, she fully cooperated with the investigation and entered a residential treatment facility. She was in the residential program from January 27, 2009 through February 26, 2009. She then entered a sober living environment for one month where she continued therapy and treatment.

16. Respondent continues to be dedicated to her recovery. She continues to go to AA meetings three to four days a week. While she still has a few medical problems, she is pain free. Respondent presented two letters from her personal physician attesting to her medical condition and that she is presently drug free.

17. Respondent made full restitution to Longs Pharmacy in the amount of \$1,248.75.

18. Respondent is a single parent of two children. She lives with her parents who fully support her in her recovery. Respondent's father testified at the hearing and stated that respondent acknowledges her mistake and takes full responsibility. He further stated that his daughter is a strong person and has worked hard to become a responsible member of the community. She is well liked and respected by her family and friends.

19. Respondent was released to go back to work in the spring of 2010. In August of 2010 she was hired by a pharmacy in her community. She reports that she has been given good performance reviews. She did not tell her employer about her past problems. Since she does not have any criminal convictions she was not required to do so. However, she recognizes that she will have to tell her employer about these matters and hopes that she will be able to remain employed.

20. While respondent's conduct is extremely serious, she has demonstrated sufficient rehabilitation and insight into her problems that it would not be against the public interest to allow her to continue to be licensed as a pharmacy technician under strict probationary terms.

21. Cost recovery was requested in the amount of \$6,445. This amount is reasonable.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 through 14, cause exists for disciplinary action pursuant to Business and Professions Code section 4301(unprofessional conduct), subdivisions (f) (acts involving moral turpitude, dishonesty, fraud and deceit), (g) (making/signing false documents), (h) (self-administration of controlled substances), (j) (violating controlled substance laws), (o) (violating pharmacy laws), and sections 4059 (furnishing dangerous drugs), 4060 (unlawful possession of drugs), 4063 (unauthorized refill), and 4324 (false signature) and Health and Safety Code sections 11350 (unlawful possession of a controlled substance), 11170 (self prescribing), and 11173, subdivision (a) (obtaining a prescription by fraud).

2. The matters set forth in mitigation, extenuation and rehabilitation set forth in Findings 15 through 20 have been considered in making the following order.

3. By reason of the matters set forth in Finding 21, cost recovery is warranted pursuant to Business and Professions Code section 125.3 in the amount of \$6,445.

ORDER

Pharmacy Technician License number TCH 79731, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 2011030866 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 2011030866 and the terms and conditions imposed thereby. It shall be respondent's

responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 2011030866 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in case number 2011030866 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$6,445. Respondent shall make said payments as set forth by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of hours per calendar month as directed by the Board. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of hours per calendar month as designated by the Board in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least the minimum number of hours designated by the Board as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least the number of hours designated by the Board as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and

devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

17. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

18. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

19. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation

timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: August 10 / 2011

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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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. 3585

11 **LISA M. SMITH**
12 **1165 Easy Street**
13 **Morgan Hill, CA 95037**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 79731**

15 Respondent.

16 Complainant alleges:

17
18 **PARTIES**

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

21 2. On or about November 21, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 79731 to Lisa M. Smith (Respondent). The Pharmacy Technician License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on May
24 31, 2011, unless renewed.

25 **JURISDICTION**

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

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 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
25 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
26 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
27 to the extent that the use impairs the ability of the person to conduct with safety to the public the
28 practice authorized by the license.

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

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

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

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

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

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

18 11. Section 4063 of the Code provides, in pertinent part, that no prescription for a
19 dangerous drug may be refilled except upon authorization of the prescriber.

20 12. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign
21 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as
22 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

23 13. Health and Safety Code section 11170 provides that no person shall prescribe,
24 administer, or furnish a controlled substance for himself or herself.

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

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

4 COST RECOVERY

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

8 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

9 17. Section 4021 of the Code states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
11 11053) of Division 10 of the Health and Safety Code.”

12 18. Section 4022 of the Code states, in pertinent part:

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

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

17 ...

18 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
19 prescription or furnished pursuant to Section 4006.”

20 19. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
21 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
22 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
23 drug as designated by Business and Professions Code section 4022. The varying compounds are
24 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

25 FACTUAL BACKGROUND

26 20. From an unknown start date until on or about January 28, 2009, Respondent was
27 employed as a pharmacy technician at a Longs Pharmacy in Morgan Hill, CA (# 342; PHY
28 49393), where she had access to controlled substances and dangerous drugs.

1 21. Between in or about October 2008 and in or about January 2009, Respondent used
2 her access to divert/steal controlled substances and dangerous drugs, including **Norco 10/325**
3 and/or generic **Hydrocodone with APAP 10/325** products.

4 22. The exact number of instances of diversion/theft by Respondent, and the full quantity
5 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
6 the course of an internal investigation conducted by Longs, Respondent admitted to direct theft of
7 approximately sixteen hundred (1,600) **Norco/generic Hydrocodone with APAP 10/325** tablets.
8 Respondent further admitted to fraudulently creating approximately ten (10) fictitious refills and
9 prescriber authorizations for **Norco 10/325** refills (60 tablets each) by inputting false information
10 into the pharmacy system. Respondent admitted that all of the drugs taken were for self-use.

11 23. A controlled substances audit of the Longs Pharmacy (# 342; PHY 49393) by which
12 Respondent was employed, for the period May 16, 2008 to January 22, 2009, revealed a shortage
13 of 1,934 tablets of **Norco** and/or **Hydrocodone with APAP 10/325** (generic **Norco**).

14 FIRST CAUSE FOR DISCIPLINE

15 (Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

16 24. Respondent is subject to discipline under section 4301(f) of the Code in that
17 Respondent, as described in paragraphs 20 to 23 above, committed one or more acts involving
18 moral turpitude, dishonesty, fraud, deceit, or corruption.

19 SECOND CAUSE FOR DISCIPLINE

20 (Making or Signing False Documents(s))

21 25. Respondent is subject to discipline under section 4301(g) of the Code in that
22 Respondent, as described in paragraphs 20 to 23 above, made or signed document(s) falsely
23 representing the existence or nonexistence of a state of facts.

24 THIRD CAUSE FOR DISCIPLINE

25 (Self-Administration of Controlled Substance(s))

26 26. Respondent is subject to discipline under section 4301(h) of the Code and/or Health
27 and Safety Code section 11170, in that Respondent, as described in paragraphs 20 to 23 above,
28 administered one or more controlled substances to herself.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance(s))

3 27. 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 20 to 23 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(s))

9 28. 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 20 to 23 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 (Unlawful/Forged Prescriptions/Refills of Prescriptions)

15 29. Respondent is subject to discipline under sections 4301(j) and/or (o) and/or sections
16 4063 and/or 4324 of the Code, in that Respondent, as described in paragraphs 20 to 23 above,
17 refilled a prescription for a dangerous drugs without prescriber authorization, signed the name of
18 another and/or falsely made, altered, forged, uttered, published, passed, or attempted to pass, as
19 genuine, a prescription and/or possessed drugs secured by such forged prescription, and/or
20 conspired in, abetted, or assisted, the performance of any of the above-described acts.

21 SEVENTH CAUSE FOR DISCIPLINE

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

23 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
25 20 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
26 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

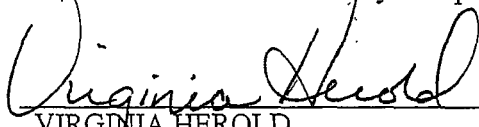
3 31. Respondent is subject to discipline under section 4301 of the Code in that
4 Respondent, as described in paragraphs 20 to 30 above, engaged in unprofessional conduct.

5
6 PRAAYER

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

- 9 1. Revoking or suspending Pharmacy Technician License No. TCH 79731, issued to
10 Lisa M. Smith (Respondent);
- 11 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
12 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 13 3. Taking such other and further action as is deemed necessary and proper.

14 DATED: 9/23/10


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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