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5 **BEFORE THE**  
6 **BOARD OF PHARMACY**  
7 **DEPARTMENT OF CONSUMER AFFAIRS**  
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 3666

10 **TRACEY LYNNE DAVIS**  
11 **1327 Grand Avenue**  
12 **Santa Rosa, CA 95404**

**DEFAULT DECISION AND ORDER**

**Pharmacy Technician License No. TCH 13104**

[Gov. Code, §11520]

Respondent.

13 FINDINGS OF FACT

14 1. On or about September 23, 2010, Complainant Virginia Herold, in her official  
15 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
16 filed Accusation No. 3666 against Tracey Lynne Davis (Respondent) before the Board of  
17 Pharmacy. A true and correct copy of the Accusation is attached as exhibit A.

18 2. On or about June 13, 1994, the Board of Pharmacy (Board) issued Pharmacy  
19 Technician License No. TCH 13104 to Respondent. The License was in full force and effect at  
20 all times relevant to the charges herein and will expire on November 30, 2011, unless renewed.

21 3. On or about October 1, 2010, Respondent was served by Certified and First Class  
22 Mail with copies of: Accusation No. 3666; a Statement to Respondent, a Notice of Defense (2  
23 copies); a Request for Discovery; and the Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6,  
24 11507.7) at Respondent's address of record, which was and is: 1327 Grand Avenue, Santa Rosa,  
25 CA 95404. Pursuant to Business and Professions Code section 136 and/or 4100, and/or  
26 California Code of Regulations, title 16, section 1704, Respondent's address of record, and any  
27 changes thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

1 4. Service of the Accusation was effective as a matter of law under Government Code  
2 section 11505, subdivision (c) and/or Business and Professions Code section 124.

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

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

9 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
10 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3666.

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

12 (a) If the respondent either fails to file a notice of defense or to appear at the  
13 hearing, the agency may take action based upon the respondent's express admissions  
14 or upon other evidence and affidavits may be used as evidence .

15 8. Pursuant to its authority under Government Code section 11520, the Board finds  
16 Respondent is in default. The Board will take action without further hearing and, based on the  
17 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
18 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
19 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3666,  
20 finds that the charges and allegations in Accusation No. 3666, are separately and severally true  
21 and correct by clear and convincing evidence.

22 9. Taking official notice of its own internal records, pursuant to Business and  
23 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
24 and Enforcement is \$1,860.00 as of February 8, 2011.

#### 25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Tracey Lynne Davis has  
27 subjected her Pharmacy Technician License No. TCH 13104 to discipline.

28 2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
License based upon the following violations alleged in the Accusation which are supported by the  
evidence contained in the Default Decision Investigatory Evidence Packet in this case:

1 a. In violation of Business and Professions Code section 4301(f), Respondent did acts  
2 involving moral turpitude, dishonesty, fraud, deceit, or corruption, including that between in or  
3 about January 2008 and May 2009, Respondent forged or falsely created at least forty-five (45)  
4 prescriptions for herself, including at least twenty-two (22) prescriptions for **Norco, Vicodin**, or  
5 other **Hydrocodone**-containing drugs and at least eighteen (18) prescriptions for **Flexeril, Amrix**,  
6 or other **cyclobenzaprine**-containing drugs, for her self-use. In addition, Respondent initially  
7 told police it was her son who was responsible for forging the prescriptions fraudulently created  
8 on Respondent's then-employer's prescription pad(s), before subsequently admitting it was her.

9 b. In violation of Business and Professions Code section 4301(g), on one or more  
10 occasions Respondent, as described above, created and/or signed documents that falsely  
11 represented the existence or nonexistence of a state of facts.

12 c. In violation of Business and Professions Code section(s) 4301(h), (j) and/or (o),  
13 and/or Health and Safety Code section 11170, on one or more occasions Respondent, as described  
14 above, administered controlled substances to herself.

15 d. In violation of Business and Professions Code section(s) 4301(l) and/or 490, by  
16 reference to California Code of Regulations, title 16, section 1770, Respondent was convicted of  
17 a substantially related crime, in that on or about October 29, 2009, in the criminal case *People v.*  
18 *Tracey Lynne Davis*, Case No. SCR-568041 in Sonoma County Superior Court, Respondent was  
19 convicted of two felony counts of violating Health and Safety Code section 11368 (Forging  
20 prescription), and two felony counts of violating Penal Code section 459 (Burglary).

21 e. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4059,  
22 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to  
23 herself or another without valid prescription, and/or conspired to furnish, and/or assisted or  
24 abetted furnishing of, controlled substance(s).

25 f. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4060,  
26 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,  
27 conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a  
28 valid prescription;

1 g. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or  
2 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to  
3 obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit,  
4 subterfuge, or concealment of material fact.

5 h. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4324,  
6 and/or Health and Safety Code section(s) 11157 and/or 11368, Respondent, as described above,  
7 falsely made, altered, forged, uttered, published, passed, or attempted to pass, a false, forged,  
8 fictitious or altered prescription, had in her possession a drug secured by a false, forged, fictitious  
9 or altered prescription, or conspired and/or assisted in or abetted any of these acts.

10 i. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or  
11 Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described above,  
12 issued prescriptions without authority to do so, obtained or possessed an invalid prescription,  
13 obtained or possessed a controlled substance by means of such invalid prescription, or conspired  
14 and/or assisted in or abetted any of these acts.

15 j. In violation of Business and Professions Code section 4301, Respondent, as described  
16 above, engaged in unprofessional conduct.

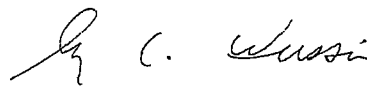
17 ORDER

18 IT IS SO ORDERED that Pharmacy Technician License No. TCH 13104, heretofore issued  
19 to Respondent Tracey Lynne Davis, is revoked.

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

24 This Decision shall become effective on May 11, 2011.

25 It is so ORDERED April 11, 2011.

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28 STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

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Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
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5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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12 **1327 Grand Avenue**  
13 **Santa Rosa, CA 95404**

**ACCUSATION**

14 **Pharmacy Technician License No. TCH 13104**

15 Respondent.

16  
17 Complainant alleges:

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 June 13, 1994, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 13104 to Tracey Lynne Davis (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on November 30, 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 (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 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
4 of a licensee under this chapter.

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

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

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

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

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

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

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

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

28 ///



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

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

5  
6 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
7 prescription or furnished pursuant to Section 4006.”

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

13 24. **Flexeril** and **Amrix** are among the brand names for **cyclobenzaprine hydrochloride**,  
14 a dangerous drug as designated by Business and Professions Code section 4022. This is a central  
15 nervous system (CNS) muscle relaxant.

#### 16 FACTUAL BACKGROUND

17 25. For approximately two (2) years from an unknown start date until in or around May  
18 2009, Respondent was employed as an office manager by a physician in Sonoma, California. In  
19 the period(s) prior to that employment, Respondent had also been employed by other physicians.

20 26. During her employment(s), Respondent took advantage of access to these physicians’  
21 prescription pads to create fraudulent prescriptions for herself. The exact number of prescriptions  
22 created and/or controlled substances/dangerous drugs fraudulently acquired is not known, but in  
23 the period between in or around January 2008 and in or around May 2009, Respondent forged or  
24 falsely created at least forty-five (45) prescriptions for herself, including at least twenty-two (22)  
25 prescriptions for **Norco, Vicodin**, or other **Hydrocodone**-containing drugs and at least eighteen  
26 (18) prescriptions for **Flexeril, Amrix**, or other **cyclobenzaprine**-containing drugs. All of these  
27 prescriptions were created for Respondent’s self-use of the fraudulently acquired drugs.

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1 a. On or about August 24, 2009, based on the conduct described in paragraphs 25  
2 to 27, Respondent was charged by Felony Complaint in Case No. SCR-568041 with forty-five  
3 (45) counts of violating Health and Safety Code section 11368 (Forging prescription), all felonies,  
4 and forty-five (45) counts of violating Penal Code section 459 (Burglary), also all felonies.

5 b. On or about October 20, 2009, Respondent pleaded no contest to two counts of  
6 violating Health and Safety Code section 11368 (Forging prescription), both felonies [enumerated  
7 counts XXXV and LXXXV] and two counts of violating Penal Code section 459 (Burglary), also  
8 both felonies [enumerated counts LXXV and XC], and was convicted of the four felonies. The  
9 remaining eighty-six (86) counts were dismissed pursuant to the plea.

10 c. On or about December 2, 2009, imposition of sentence was suspended in favor  
11 of a period of formal probation of thirty-six (36) months, on terms and conditions including nine  
12 (9) months in jail, drug testing, prohibitions on use of alcohol or drugs, fines and fees.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Furnishing of Controlled Substance)

15 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
16 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described  
17 in paragraphs 25 to 27, furnished to herself or another without a valid prescription, and/or  
18 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Possession of Controlled Substance)

21 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
22 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
23 in paragraphs 25 to 27, possessed, conspired to possess, and/or assisted in or abetted possession  
24 of, a controlled substance, without a prescription.

25 SEVENTH CAUSE FOR DISCIPLINE

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

27 34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
28 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs

1 25 to 27, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled  
2 substance, by fraud, deceit, subterfuge, or concealment of material fact.

3 EIGHTH CAUSE FOR DISCIPLINE

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

5 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
6 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that  
7 Respondent, as described in paragraphs 25 to 27, falsely made, altered, forged, uttered, published,  
8 passed, or attempted to pass, a false, forged, fictitious or altered prescription for a (narcotic) drug,  
9 had in her possession a (narcotic) drug secured by a false, forged, fictitious or altered  
10 prescription, or conspired and/or assisted in or abetted any of these acts.

11 NINTH CAUSE FOR DISCIPLINE

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

13 36. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
14 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in  
15 paragraphs 25 to 27, issued prescriptions without authority to do so, obtained or possessed an  
16 invalid prescription, obtained or possessed a controlled substance by means of such invalid  
17 prescription, or conspired and/or assisted in or abetted any of these acts.

18 TENTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 37. Respondent is subject to discipline under section 4301 of the Code in that  
21 Respondent, as described in paragraphs 25 to 36, engaged in unprofessional conduct.

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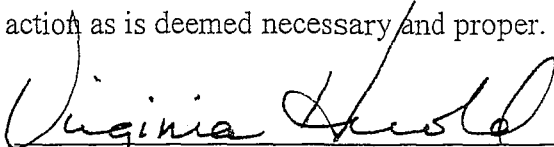
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 13104, issued to Tracey Lynne Davis (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 9/23/10



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

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