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

10 In the Matter of the Accusation Against:

Case No. 4010

11 **KIMBERLY I. COOPER**
12 **880 Campus Drive # 222**
13 **Daly City, CA 94015**

DEFAULT DECISION AND ORDER

Pharmacy Technician License No. TCH 60577

[Gov. Code, §11520]

Respondent.

14 **FINDINGS OF FACT**

15 1. On or about July 14, 2011, Complainant Virginia Herold, in her official capacity as
16 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
17 Accusation No. 4010 against Kimberly I. Cooper (Respondent) before the Board of Pharmacy.
18 (A copy of the Accusation is attached as Exhibit A.)

19 2. On or about January 13, 2005, the Board of Pharmacy (Board) issued Pharmacy
20 Technician License No. TCH 60577 to Respondent. The License was in effect at all times
21 relevant to the charges in Accusation No. 4010 and will expire on June 30, 2012, unless renewed.

22 3. On or about July 20, 2011, Respondent was served by Certified and First Class Mail
23 with copies of: Accusation No. 3879; a Statement to Respondent, a Notice of Defense (2 copies);
24 a Request for Discovery; and Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, 11507.7) at
25 Respondent's address of record: 880 Campus Drive # 222, Daly City, CA 94015.

26 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
27 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
28 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

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

4 a. In violation of Business and Professions Code section 4301(f), Respondent did the
5 following acts involving moral turpitude, dishonesty, fraud, deceit, or corruption: In or between
6 January and July 2010, Respondent stole/diverted an unknown quantity of controlled substances
7 from her employer (a Rite Aid pharmacy), including at least ninety (90) tablets of **Percocet** (or its
8 generic equivalent, **Oxycodone with APAP**). During the tenure of her employment, the Rite Aid
9 pharmacy also experienced a theft/loss of at least 915 tablets of **Hydrocodone with APAP**.

10 b. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059,
11 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
12 herself or another without a valid prescription, and/or conspired, assisted or abetted furnishing of,
13 a controlled substance, without a valid prescription;

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

18 d. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
19 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired t
20 obtain and/or assisted in or abetted obtaining of, a controlled substance by fraud, deceit,
21 subterfuge, or concealment of a material fact;

22 e. In violation of Business and Professions Code section 4301, Respondent, as described
23 above, engaged in unprofessional conduct.

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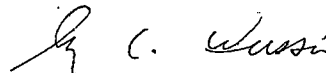
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 60577, heretofore issued to Respondent Kimberly I. Cooper, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute. This decision shall become effective on April 12, 2012.

It is so ORDERED on March 13, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF



By

STANLEY C. WEISSER

Board President

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DOJ Matter ID:SF2011200928

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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. 4010

11 **KIMBERLY I. COOPER**
12 **880 Campus Drive # 222**
13 **Daly City, CA 94015**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 60577**

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 January 13, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 60577 to Kimberly I. Cooper (Respondent). The Pharmacy Technician License
22 was in full force and effect at all times relevant to the charges brought herein and will expire on
23 June 30, 2012, unless renewed.

24
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.

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

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

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

...

“(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.”

17. **Percocet** is a brand name for a compound of acetaminophen (APAP) and **oxycodone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b) and a dangerous drug as designated by Business and Professions Code section 4022. It is also known generically as **Oxycodone with APAP**. It is a narcotic drug.

18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (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**. These are all narcotic drugs.

FACTUAL BACKGROUND

19. From an unknown start date until on or about July 2, 2010, Respondent was employed as a pharmacy technician at a Rite Aid Pharmacy (PHY 42838) in Pacifica, CA, where by virtue of her employment and licensure she had access to controlled substances and dangerous drugs.

20. During the tenure of her employment, Respondent used this access to divert and steal controlled substances and dangerous drugs, including **Percocet/Oxycodone with APAP**.

21. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen, are not known, but investigations by Rite Aid Pharmacy and Board Inspector(s) revealed/reported the following:

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1 a. On or about July 2, 2010, Respondent diverted/stole (90) tablets of **Percocet** (or
2 **Oxycodone with APAP**) from the Rite Aid Pharmacy in which she was employed;

3 b. Video surveillance of the pharmacy showed Respondent conducting the theft;

4 c. On or about August 9, 2010, Rite Aid Pharmacy submitted a Report of Theft or
5 Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a theft of
6 ninety (90) tablets of **Percocet/Oxycodone with APAP**, attributed to Respondent's pilferage.

7 d. On or about December 3, 2010, Rite Aid Pharmacy submitted a second Report
8 of Theft or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing
9 a further loss of 915 tablets of **Hydrocodone with APAP**, also attributed to employee pilferage.

10
11 FIRST CAUSE FOR DISCIPLINE

12 (Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

13 22. Respondent is subject to discipline under section(s) 4301((f) of the Code, in that
14 Respondent, as described in paragraphs 19 to 21 above, committed acts involving moral
15 turpitude, dishonesty, fraud, deceit, or corruption.

16 SECOND CAUSE FOR DISCIPLINE

17 (Furnishing of Controlled Substance(s))

18 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
19 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
20 in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
21 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

22 THIRD CAUSE FOR DISCIPLINE

23 (Possession of Controlled Substance(s))

24 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
25 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
26 in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted
27 possession of, a controlled substance, without a prescription.

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

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

3 25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

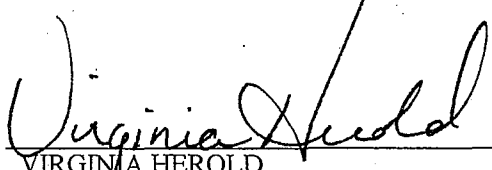
9 26. Respondent is subject to discipline under section 4301 of the Code in that
10 Respondent, as described in paragraphs 19 to 25 above, engaged in unprofessional conduct.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License No. TCH 60577, issued to
15 Kimberly I. Cooper (Respondent);
16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
18 3. Taking such other and further action as is deemed necessary and proper.
19

20
21 DATED: 7/14/11


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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