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

In the Matter of the Accusation Against:

Case No. 4736

LISA M. EBERLE
806 Southdale Court
Galt, CA 95632

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician Registration No. TCH
34600

Respondent.

FINDINGS OF FACT

1. On or about September 6, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4736 against Lisa M. Eberle (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 13, 2000, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 34600 to Respondent. The Pharmacy Technician Registration

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 4736
2 and will expire on December 31, 2013, unless renewed.

3 3. On or about September 27, 2013, Respondent was served by Certified and First Class
4 Mail copies of Accusation No. 4736, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 806 Southdale Court
10 Galt, CA 95632.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
13 124.

14 5. On or about October 8, 2013, the aforementioned Certified Mail documents were
15 returned by the U.S. Postal Service marked "Not Deliverable As Addressed—Unable To
16 Forward." The address on the documents was the same as the address on file with the Board.
17 Respondent failed to maintain an updated address with the Board and the Board has made
18 attempts to serve the Respondent at the address on file. Respondent has not made herself
19 available for service and therefore, has not availed herself of her right to file a notice of defense
20 and appear at hearing.

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

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

27 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
28 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4736.

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1 8. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express admissions
4 or upon other evidence and affidavits may be used as evidence without any notice to
5 respondent.

6 9. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
9 taking official notice of all the investigatory reports, exhibits and statements contained therein on
10 file at the Board's offices regarding the allegations contained in Accusation No. 4736, finds that
11 the charges and allegations in Accusation No. 4736 are separately and severally found to be true
12 and correct by clear and convincing evidence.

13 10. Taking official notice of its own internal records, pursuant to Business and
14 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
15 and Enforcement is \$4,054.50 as of November 13, 2013.

16 DETERMINATION OF ISSUES

17 1. Based on the foregoing findings of fact, Respondent Lisa M. Eberle has subjected her
18 Pharmacy Technician Registration No. TCH 34600 to discipline.

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

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

23 a. Respondent violated California Business and Professions Code sections 475(a)(4),
24 4301(f) and (g), 4051(a), and 4324(a) in that she engaged in unprofessional conduct by
25 performing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
26 circumstances are as follows:

27 i. From on or about April of 2011 through March of 2012, while employed as a
28 pharmacy technician at Raley's of Galt, Respondent diverted hydrocodone-containing schedule
III controlled substance medications by entering fraudulent refills (via forged prescription refills)

1 for medications by using patient profiles of different patients, including "Patient W" and "Patient
2 M," both of whom are deceased. Drug loss audits showed a loss of at least 984 tablets of
3 hydrocodone-containing medications.

4 b. Respondent violated California Business and Professions Code sections 4060 and
5 4301(j) and (o), and section 11350(a) of the California Health and Safety Code, in that she
6 violated section 4060 of the California Business and Professions Code, and California Health and
7 Safety Code sections 11350(a) and 11377(a), by illegally possessing a controlled substance. The
8 circumstances are as follows:

9 i. From on or about April of 2011 through March of 2012, Respondent diverted
10 hydrocodone-containing medications from Raley's of Galt. Therefore, Respondent was in
11 possession of those medications without a prescription for them.

12 c. Respondent violated California Business and Professions Code section 4301(h), and
13 title 21 of the United States Code, sections 829(a) and 841(a)(1), in that she unlawfully self-
14 administered controlled substances. The circumstances are as follows:

15 i. From on or about April of 2011 through March of 2012, Respondent diverted
16 hydrocodone-containing medications from Raley's of Galt. After obtaining those medications,
17 Respondent self-administered them.

18 d. Respondent violated California Business and Professions Code sections 4051,
19 4059(a), 4077, and 4301(h), and title 21 of the United States Code, sections 828(a), 829(a), and
20 841(a)(1), in that she unlawfully sold controlled substances. The circumstances are as follows:

21 i. From on or about April of 2011 through March of 2012, Respondent diverted
22 hydrocodone-containing medications from Raley's of Galt. After obtaining those medications,
23 Respondent sold them to others for the purpose of financial gain.

24 e. The circumstances of the above-mentioned conduct subjects Respondent's Pharmacy
25 Technician Registration to discipline, under California Business and Professions Code sections
26 475(a)(4), 4051, 4051(a), 4059(a), 4060, 4077, and 4301(h), (j), and (o), 4301(f) and (g), and
27 4324(a), section 11350(a) of the California Health and Safety Code, and title 21 of the United
28 States Code, sections 828(a), 829(a), and 841(a)(1), in that: (1) Respondent's conduct constitutes

1 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption; (2) Respondent illegally
2 possessed a controlled substance; (3) Respondent unlawfully self-administered controlled
3 substances; and (4) Respondent unlawfully sold controlled substances. As a pharmacy
4 technician, Respondent has access to a variety of controlled substances, including hydrocodone-
5 containing schedule III medications. The above-mentioned conduct establishes that Respondent
6 has a propensity to generate fraudulent refills for, divert, self-administer, and sell hydrocodone-
7 containing medications which causes a significant financial loss to her employer, as well as a
8 danger to the public in that Respondent could be working or driving while under the influence of
9 hydrocodone-containing medications and Respondent could provide individuals (who do not
10 possess a valid prescription) with an improper dosage of prescription medication.

11 ORDER

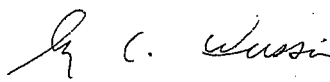
12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 34600, heretofore
13 issued to Respondent Lisa M. Eberle, is revoked.

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

18 This Decision shall become effective on January 17, 2014.

19 It is so ORDERED ON December 18, 2013.

20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 
24 By _____
25 STAN C. WEISSER
26 Board President

27 11201940.DOC
28 DOJ Matter ID: SA2013111625

Exhibit A

Accusation

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4736

12 **LISA M. EBERLE**
13 **806 Southdale**
14 **Galt, CA 95632**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **34600**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 13, 2000, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 34600 to Lisa M. Eberle (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2013, unless renewed.

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1 **JURISDICTION**

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

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

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states, in pertinent part:

9 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
10 govern the denial of licenses on the grounds of:

11 ". . .

12 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent to
13 substantially benefit himself or another, or substantially injure another.

14 "(4) Commission of any act which, if done by a licentiate of the business or profession in
15 question, would be grounds for suspension or revocation of license. . . ."

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

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in
18 humans or animals, and includes the following:

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

21 ". . .

22 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
23 prescription or furnished pursuant to Section 4006."

24 7. Section 4051 of the Code states, in pertinent part:

25 "(a) Except as otherwise provided in this chapter, it is unlawful for any person to
26 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to
27 dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she
28 is a pharmacist under this chapter. . . ."

1 8. Section 4059 of the Code states, in pertinent part:

2 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7. . . ."

7 9. Section 4060 of the Code states:

8 "No person shall possess any controlled substance, except that furnished to a person upon
9 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
11 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18 labeled with the name and address of the supplier or producer.

19 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
21 devices."

22 10. Section 4077 of the Code states, in pertinent part, that except as provided in
23 subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon
24 prescription except in a container correctly labeled with the information required by Section
25 4076.

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1 11. Section 4301 of the Code states, in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 "(a) Gross immorality.

6 "...

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

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

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

17 "...

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

20 "...

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

25 "(p) Actions or conduct that would have warranted denial of a license. . . ."

26 12. Section 4324 of the Code states, in pertinent part:

27 "(a) Every person who signs the name of another, or of a fictitious person, or falsely
28 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription

1 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
2 in the state prison, or by imprisonment in the county jail for not more than one year. . . .”

3 **HEALTH AND SAFETY CODE**

4 13. California Health and Safety Code section 11056 states, in pertinent part:

5 “(a) The controlled substances listed in this section are included in Schedule III.

6 “. . .

7 “(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any
8 material, compound, mixture, or preparation containing any of the following narcotic drugs, or
9 their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth
10 below:

11 “. . .

12 (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than
13 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized
14 therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the
15 above specified amounts may not contain as its nonnarcotic ingredients two or more
16 antihistamines in combination with each other. . . .”

17 14. California Health and Safety Code section 11350 states, in pertinent part:

18 “(a) Except as otherwise provided in this division, every person who possesses (1) any
19 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
20 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
21 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
22 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
23 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
24 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
25 Section 1170 of the Penal Code. . . .”

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1 **REGULATIONS**

2 15. Title 21 of the United States Code, section 828 states, in pertinent part:

3 “(a) Unlawful distribution of controlled substances. It shall be unlawful for any person to
4 distribute a controlled substance in schedule I or II to another except in pursuance of a written
5 order of the person to whom such substance is distributed, made on a form to be issued by the
6 Attorney General in blank in accordance with subsection (d) and regulations prescribed by him
7 pursuant to this section. . . .”

8 16. Title 21 of the United States Code, section 829 states, in pertinent part:

9 “(b) Schedule III and IV substances. Except when dispensed directly by a practitioner,
10 other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which
11 is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS
12 §§ 301 et seq.], may be dispensed without a written or oral prescription in conformity with
13 section 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled
14 more than six months after the date thereof or be refilled more than five times after the date of the
15 prescription unless renewed by the practitioner. . . .”

16 17. Title 21 of the United States Code, section 841 states, in pertinent part:

17 “(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person
18 knowingly or intentionally--

19 “(1) to manufacture, distribute, or dispense, or possess with intent to manufacture,
20 distribute, or dispense, a controlled substance; or

21 “(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a
22 counterfeit substance. . . .”

23 **COST RECOVERY**

24 18. Section 125.3 of the Code states, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Corrupt Acts)**

3 19. Respondent is subject to disciplinary action under sections 475(a)(4), 4301(f) and (g),
4 4051(a), and 4324(a) of the Code in that she engaged in unprofessional conduct by conducting
5 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as
6 follows:

7 20. From on or about April of 2011 through March of 2012, while employed as a
8 pharmacy technician at Raley's of Galt, Respondent diverted hydrocodone-containing schedule
9 III controlled substance medications by entering fraudulent refills (via forged prescription refills)
10 for medications by using patient profiles of different patients, including "Patient W" and "Patient
11 M," both of whom are deceased. Drug loss audits showed a loss of at least 984 tablets of
12 hydrocodone-containing medications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession of a Controlled Substance)**

15 21. Respondent is subject to disciplinary action under sections 4060 and 4301(j) and (o)
16 of the Code, and section 11350(a) of the California Health and Safety Code, in that she violated
17 section 4060 of the Code, and California Health and Safety Code sections 11350(a) and 11377(a)
18 by illegally possessing a controlled substance. The circumstances are as follows:

19 22. From on or about April of 2011 through March of 2012, Respondent diverted
20 hydrocodone-containing medications from Raley's of Galt. Therefore, Respondent was in
21 possession of those medications without a prescription for them.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unlawful Self-Administration of Controlled Substances)**

24 23. Respondent is subject to disciplinary action under section 4301(h) of the Code, and
25 title 21 of the United States Code, sections 829(a) and 841(a)(1) in that she unlawfully self-
26 administered controlled substances. The circumstances are as follows:

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24. From on or about April of 2011 through March of 2012, Respondent diverted hydrocodone-containing medications from Raley's of Galt. After obtaining those medications, Respondent self-administered them.

FOURTH CAUSE FOR DISCIPLINE
(Unlawful Sale of Controlled Substances)

25. Respondent is subject to disciplinary action under sections 4051, 4059(a), 4077, and 4301(h) of the Code, and title 21 of the United States Code, sections 828(a), 829(a), and 841(a)(1) in that she unlawfully sold controlled substances. The circumstances are as follows:

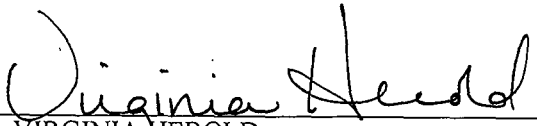
26. From on or about April of 2011 through March of 2012, Respondent diverted hydrocodone-containing medications from Raley's of Galt. After obtaining those medications, Respondent sold them to others for the purpose of financial gain.

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 Registration Number TCH 34600, issued to Lisa M. Eberle;
- 2. Ordering Lisa M. Eberle to pay the Board of Pharmacy 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 deemed necessary and proper.

DATED: 9/6/13


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