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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. 3252

11 CALEB THOMAS GARLIPP
12 1676 Le Roy Avenue
Berkeley, CA 94709

A C C U S A T I O N

13 Pharmacy Technician License No. TCH 74999

14 Respondent.

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16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 28, 2007, the Board of Pharmacy issued Pharmacy
22 Technician License Number TCH 74999 to Caleb Thomas Garlipp (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein.
24 It expired on January 31, 2009, and has not been renewed.

25 JURISDICTION

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

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

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

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension,
7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
8 proceed with a disciplinary action during the period within which the license may be renewed,
9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license
10 that is not renewed within three years following its expiration may not be renewed, restored, or
11 reinstated and shall be canceled by operation of law at the end of the three-year period. Section
12 4402(e) of the Code provides that any other license issued by the Board may be canceled by the
13 Board if not renewed within 60 days after its expiration, and any license canceled in this fashion
14 may not be 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
17 take action against any holder of a license who is guilty of “unprofessional conduct,” defined to
18 include, but not be limited to, any of the following:

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

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

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

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

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

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

10 9. California Code of Regulations, title 16, section 1770, provides that for the
11 purpose(s) of license discipline, a crime or act shall be considered substantially related to the
12 qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences
13 present or potential unfitness of a licensee or registrant to perform the functions authorized by the
14 license or registration in a manner consistent with the public health, safety, or welfare.

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

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

19 12. Health and Safety Code section 11170 provides that no person shall
20 prescribe, administer, or furnish a controlled substance for himself or herself.

21 13. Health and Safety Code section 11173, subdivision (a), provides that no
22 person shall obtain or attempt to obtain controlled substances or a prescription therefor, (1) by
23 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

24 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful
25 to possess certain Schedule I controlled substances (e.g., those in Health and Safety Code section
26 11054, subdivision (b), (c), or (f)(1)), any controlled substance in Schedule II (Health and Safety
27 Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic, absent a prescription.

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1 15. Health and Safety Code section 11351, in pertinent part, makes it unlawful
2 to possess for sale certain Schedule I controlled substances (e.g., those in Health and Safety Code
3 section 11054, subdivision (b) or (c)), any controlled substance in Schedule II (Health and Safety
4 Code section 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug.

5 16. Health and Safety Code section 11352, in pertinent part, makes it unlawful
6 to transport, import, sell, furnish, administer, or give away, or offer to transport, import, sell,
7 furnish, administer, or give away, certain Schedule I controlled substances (e.g., those in Health
8 and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in
9 Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V
10 narcotic drug, without a valid prescription.

11 17. Health and Safety Code section 11377, in pertinent part, makes it unlawful
12 to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic
13 drug, or certain controlled substances in Schedule II (Health and Safety Code section 11055),
14 subdivision (d), (e), or (f), without a valid prescription.

15 18. Health and Safety Code section 11378, in pertinent part, makes it unlawful
16 to possess for sale any controlled substance classified in Schedule III, IV, or V which is not a
17 narcotic drug, or certain controlled substances in Schedule II (Health and Safety Code section
18 11055), subdivision (d), (e), or (f).

19 19. Health and Safety Code section 11379, in pertinent part, makes it unlawful
20 for any person to transport, import into this state, sell, furnish, administer, or give away, or offer
21 to transport, import, sell, furnish, administer, or give away, any controlled substance classified in
22 Schedule III, IV, or V which is not a narcotic drug, or certain controlled substances in Schedule II
23 (Health and Safety Code section 11055), subdivision (d), (e), or (f), without a valid prescription.

24 20. Health and Safety Code section 11550, in pertinent part, makes it unlawful
25 to use or be under the influence of certain Schedule I controlled substances (e.g., those in Health
26 and Safety Code section 11054, subdivision (b), (c) or (f)(1)), any controlled substance in
27 Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any Schedule III-V
28 narcotic drug, except when administered by or under the direction of an authorized licensee.

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

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 22. Section 4021 of the Code states:

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

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

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

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

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

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

20 25. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled
21 substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as
22 designated by Business and Professions Code section 4022. It is a depressant drug.

23 26. **OxyContin** is a brand name for **oxycodone**, a Schedule II controlled
24 substance as designated by Health and Safety Code section 11055(b)(1)(N) and a dangerous drug
25 as designated by Business and Professions Code section 4022. It is an opiate drug.

26 27. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled
27 substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as
28 designated by Business and Professions Code section 4022. It is a depressant drug.

1 36. Respondent admitted to hiding bottles of the drugs on his person in order
2 to take them from the Walgreens pharmacy. Respondent admitted to selling the drugs on the
3 street, and also to trading the stolen controlled substances for (base/rock) **cocaine** for personal
4 use. He further admitted to doing so because of financial problems and his own drug addiction.

5 37. On or about February 29, 2008, Walgreens completed an (amended) DEA
6 106 form (Report of Theft or Loss of Controlled Substances) listing losses due to theft prior to
7 September 4, 2007 (on which date Respondent was terminated from employment) of \$42,419.00
8 worth of drugs, consisting of 100 tablets of **Dexedrine**, 22 **Duragesic** patches, 4,813 tablets of
9 **Methadose**, 15 tablets of **Ritalin**, 2,941 tablets of **OxyContin**, 657 tablets of **Xanax**, 536 tablets
10 of **Valium**, 2,303 tablets of **Vicodin**, 501 tablets of **Lortab**, and 10,623 tablets of **Norco** (or their
11 generic equivalent(s)), a total of 22,511 dose units of controlled substances believed stolen.

12 38. On or about September 1, 2007, Respondent was taken into custody and/or
13 arrested by Oakland Police on suspicion of violating Health and Safety Code section 11350(a)
14 (Possession of Controlled Substance - base/rock **cocaine**) and Health and Safety Code section
15 11364 (Possession of Drug Paraphernalia). Based on this arrest, on or about September 5, 2007,
16 in a case titled *People v. Caleb Garlipp*, Case No. 532777 in Alameda County Superior Court,
17 Respondent was charged by felony Complaint with violating Health and Safety Code section
18 11350(a) (Possession of Controlled Substance - base/rock **cocaine**), a felony.

19 39. On or about September 4, 2007, based on the conduct described above in
20 paragraphs 34-37, Respondent was taken into custody and/or arrested by Oakland Police on
21 suspicion of violating Penal Code section 503 (Embezzlement), with an additional charge under
22 Penal Code section 12022.1 (Commission of a Felony While Out on Bail/Recognizance). On or
23 about September 6, 2007, in a case titled *People v. Caleb Garlipp*, Case No(s). 156462 and/or
24 532839 in Alameda County Superior Court, Respondent was charged by felony Complaint with
25 violating Penal Code section 487(a) (Grand Theft > \$400), a felony. On or about September 11,
26 2007, Respondent entered a plea of no contest and was found guilty/convicted of violating Penal
27 Code section 487(a) (Grand Theft > \$400), a felony. Pursuant to the plea, the charge(s) in Case
28 No. 532777 (paragraph 38, above) against Respondent was/were dismissed.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 44. Respondent is subject to discipline under section 4301(j) and/or (o) and/or
4 section 4059 of the Code in that Respondent, as described in paragraphs 34 to 40 above,
5 furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or
6 assisted or abetted furnishing of, a controlled substance.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Possession of Controlled Substance)

10 45. Respondent is subject to discipline under section 4301(j) and/or (o) and/or
11 section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that
12 Respondent, as described in paragraphs 34 to 40 above, possessed, conspired to possess, and/or
13 assisted in or abetted possession of, a controlled substance, without a prescription.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Self-Administration/Use of Controlled Substance)

17 46. Respondent is subject to discipline under section 4301(j) and/or (o) of the
18 Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as
19 described in paragraphs 34 to 40 above, self-administered/used, conspired to self-administer/use,
20 and/or assisted in/abetted self-administration/use of, a controlled substance, without prescription.

21
22 SEVENTH CAUSE FOR DISCIPLINE

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

24 47. Respondent is subject to discipline under section 4301(j) and/or (o) of the
25 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in
26 paragraphs 34 to 40 above, obtained, conspired to obtain, and/or assisted in or abetted the
27 obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Possession or Purchase of Controlled Substance for Sale/Furnishing)

3 48. Respondent is subject to discipline under section 4301(j) and/or (o) of the
4 Code, and/or Health and Safety Code section(s) 11351, 11378, and/or 11379, in that Respondent,
5 as described in paragraphs 34 to 40 above, possessed or purchased a controlled substance for
6 sale, or conspired and/or assisted in or abetted such possession or purchase for sale, and/or
7 transported, imported, sold, furnished, administered, gave away, offered to transport, import, sell,
8 furnish, administer, or give away, or conspired and/or assisted in or abetted such transportation,
9 importation, sale, furnishing, administration, or gifting of, a controlled substance.

10
11 NINTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct)

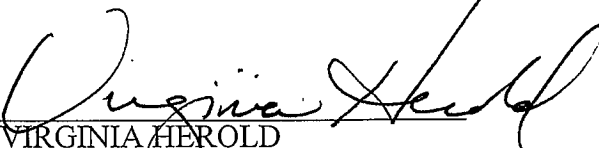
13 49. Respondent is subject to discipline under section 4301 of the Code in that
14 Respondent, as described in paragraphs 34 to 48 above, engaged in unprofessional conduct.

15
16 PRAYER

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

- 19 A. Revoking or suspending Pharmacy Technician License Number TCH
20 61671, issued to Caleb Thomas Garlipp (Respondent);
- 21 B. Ordering Respondent to pay the Board reasonable costs of investigation
22 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 23 C. Taking such other and further action as is deemed necessary and proper.

24 DATED: 6/5/09

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