

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JANICE K. LACHMAN
Supervising Deputy Attorney General
4 State Bar No. 186131
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7384
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against,

Case No. 3292

13 **KRISTA R. CAULEY**
16718 Annie Drive
Grass Valley, CA 95949

ACCUSATION

14 Original Pharmacy Technician Registration
No. TCH 30909

15 Respondent.

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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 September 23, 1999, the Board of Pharmacy issued Original Pharmacy
22 Technician Registration Number TCH 30909 to Krista R. Cauley ("Respondent"). The Original
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on March 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 unless otherwise indicated.

1 4. Section 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

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

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

7 “(b) The Board shall discipline the holder of any license issued by the Board, whose
8 default has been entered or whose case has been heard by the Board and found guilty, by any of
9 the following methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

12 “(3) Suspending his or her right to practice for a period not exceeding one year.

13 “(4) Revoking his or her license.

14 “(5) Taking any other action in relation to disciplining him or her as the Board in its
15 discretion may deem proper.

16 6. Section 4301 of the Code states:

17 “The Board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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

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1 "(k) The conviction of more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
3 combination of those substances.

4 "(l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of a
6 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
7 States Code regulating controlled substances or of a violation of the statutes of this
8 state regulating controlled substances or dangerous drugs shall be conclusive
9 evidence of unprofessional conduct. In all other cases, the record of conviction shall
10 be conclusive evidence only of the fact that the conviction occurred. The Board may
11 inquire into the circumstances surrounding the commission of the crime, in order to
12 fix the degree of discipline or, in the case of a conviction not involving controlled
13 substances or dangerous drugs, to determine if the conviction is of an offense
14 substantially related to the qualifications, functions, and duties of a licensee under this
15 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
16 contendere is deemed to be a conviction within the meaning of this provision. The
17 board may take action when the time for appeal has elapsed, or the judgment of
18 conviction has been affirmed on appeal or when an order granting probation is made
19 suspending the imposition of sentence, irrespective of a subsequent order under
20 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
21 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment.

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

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

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

 8. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon
the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified

1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
8 labeled with the name and address of the supplier or producer.

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

12 9. Section 4022 of the Code states

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

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

17 "(b) Any device that bears the statement: "Caution: federal law restricts this device to
18 sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be
19 filled in with the designation of the practitioner licensed to use or order use of the device.

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

22 10. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

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1 Respondent violated Health and Safety Code section 11350(a), as set forth above in paragraph 12,
2 and also violated Code section 4060, in that between December 2007 and February 12, 2008,
3 Respondent unlawfully possessed the controlled substance hydrocodone.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Unlawful Self-Administration of Controlled Substances)

6 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
7 in that on multiple occasions between December 2007 and February 12, 2008, Respondent
8 unlawfully self administered hydrocodone, a controlled substance.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Dishonest/Fraudulent/Corrupt/Deceitful Acts)

11 16. Respondent is subject to disciplinary action under section 4301, subdivision (f) in
12 that, between December 2007 and February 12, 2008, while employed and on duty as a pharmacy
13 technician at the Target store in Auburn, California, Respondent committed dishonest, fraudulent,
14 corrupt, and/or deceitful acts by stealing unknown quantities of hydrocodone, a controlled
15 substance, from the Target pharmacy, as described above in paragraph 12.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 (Violation of Laws Governing Pharmacy)

18 17. Respondent is subject to disciplinary action under Code section 4301, subsection (o),
19 in that from December 2007 through February 12, 2008, Respondent committed acts in violation
20 of the laws governing pharmacy, as set forth above in paragraphs 12 through 15.

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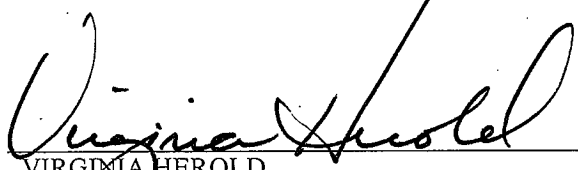
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PRAYER

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 Original Pharmacy Technician Registration Number TCH 30909, issued to Krista R. Cauley;
2. Ordering Krista R. Cauley 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: 10/27/09



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

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