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| 8 | BEFORE THE |
| 9 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS |
| | STATE OF CALIFORNIA |
| 10 | In the Matter of the Accusation Against: Case No. 3363 |
| 11 | TAMMY LYNN DICARO |
| 12 | 570 Dolan RoadMoss Landing, CA 95039A C C U S A T I O N |
| 13 | Pharmacy Technician License No. TCH 64715 |
| 14 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 August 24, 2005, the Board of Pharmacy issued Pharmacy Technician |
| 21 | License Number TCH 64715 to Tammy Lynn Dicaro (Respondent). The Pharmacy Technician |
| 22 | License was in full force and effect at all times relevant to the charges brought herein and will |
| 23 | expire on September 30, 2011, unless renewed. |
| 24 | JURISDICTION |
| 25 | 3. This Accusation is brought before the Board of Pharmacy (Board), Department of |
| 26 | Consumer Affairs, under the authority of the following laws. All section references are to the |
| 27 | Business and Professions Code (Code) unless otherwise indicated. |
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4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
Act [Health & Safety Code, § 11000 et seq.].

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

Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, 6. 6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a 7 disciplinary action during the period within which the license may be renewed, restored, reissued 8 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not 9 renewed within three years following its expiration may not be renewed, restored, or reinstated 10 11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not 12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be 13 reissued but will instead require a new application to seek reissuance. 14

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
not be limited to, any of the following:

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

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

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

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

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

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

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

9 "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 her 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 dangerous
16 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 possess any
18 controlled substance, except that furnished upon a valid prescription/drug order.

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

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

14. Health and Safety Code section 11157 provides that no person shall issue a
prescription that is false or fictitious in any respect.

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

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| 1 | 16. Health and Safety Code section 11173, subdivision (a), provides that no person shall |
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| 2 | obtain or attempt to obtain controlled substances, or procure or attempt to procure the |
| 3 | administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, |
| 4 | or subterfuge; or (2) by the concealment of a material fact. |
| 5 | 17. Health and Safety Code section 11175 makes it unlawful for any person to obtain or |
| 6 | possess a prescription that does not comply with the Uniform Controlled Subtances Act [Health |
| 7 | & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant |
| 8 | prescription, or to possess a controlled substance obtained by such a prescription. |
| 9 | 18. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess |
| 10 | any controlled substance listed in Schedule II (Health and Safety Code section 11055), |
| 11 | subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription. |
| 12 | 19. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or |
| 13 | alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged |
| 14 | or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered |
| 15 | prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription. |
| 1,6 | 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the |
| 17 | administrative law judge to direct a licentiate found to have committed a violation of the licensing |
| 18 | act to pay a sum not to exceed its reasonable costs of investigation and enforcement. |
| 19 | CONTROLLED SUBSTANCES / DANGEROUS DRUGS |
| 20 | 21. Section 4021 of the Code states: |
| 21 | "Controlled substance' means any substance listed in Chapter 2 (commencing with Section |
| 22 | 11053) of Division 10 of the Health and Safety Code." |
| 23 | 22. Section 4022 of the Code states, in pertinent part: |
| 24 | "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, |
| 25 | except veterinary drugs that are labeled as such, and includes the following: |
| 26 | "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without |
| 27 | prescription,' 'Rx only,' or words of similar import. |
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"(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."

23. Norco, Vicodin, Vicodin ES, Lorta b, and Lorcet are among the brand names for
compounds of varying dosages of acetaminophen (aka 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. Likewise, Vicoprofen is among the brand
names for a compound of ibuprofen and hydrocodone, and is known in its generic form(s) by the
name Hydrocodone with Ibuprofen. These are all narcotic drugs.

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FACTUAL BACKGROUND

Between on or about December 14, 2007 and on or about May 15, 2008, Respondent
 was employed as a pharmacy technician at a Save Mart Pharmacy (# 746; PHY 48495) in Salinas,
 California. In that position, she had access to controlled substances and dangerous drugs.

14 25. Between on or about December 20, 2007 and on or about April 28, 2008, Respondent
15 made use of that access to divert/steal controlled substances and dangerous drugs. Specifically,
16 Respondent forged/created fraudulent prescription (refill) documents showing approvals for the
17 authorization and/or refilling of controlled substance prescriptions that were never authorized by
18 the indicated prescriber(s), and then signed for and picked up the drugs for self-use.

By this method, Respondent fraudulently created, filled, and acquired for self-use, at
least five (5) prescriptions, for ninety (90) tablets each, of Norco or Hydrocodone with APAP
(or other name brand) products, and at least seven (7) prescriptions, for ninety (90) tablets each,
of Vicoprofen or Hydrocodone with Ibuprofen (or other name brand) products, a total of at
least 1,080 tablets of narcotic controlled substances. Respondent admitted to taking the drugs for
self-use, and admitted to the lack of prescriber authorization for the prescriptions/refills.

25 27. On or about December 10, 2008, Save Mart Pharmacy # 746 submitted a Report of
26 Theft or Loss of Controlled Substances (DEA-106) to the Drug Enforcement Administration in
27 which it listed losses from employee pilferage of 450 tablets of Norco or Hydrocodone with
28 APAP, and 940 tablets of Vicoprofen or Hydrocodone with Ibuprofen.

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| 1 | FIRST CAUSE FOR DISCIPLINE |
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| 2 | (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) |
| 3 | 28. Respondent is subject to discipline under section 4301(f) of the Code in that |
| 4 | Respondent, as described in paragraphs 24 to 27 above, committed numerous acts involving |
| 5 | moral turpitude, dishonesty, fraud, deceit, or corruption. |
| 6 | SECOND CAUSE FOR DISCIPLINE |
| 7 | (Creation/Signature of False Documents) |
| 8 | 29. Respondent is subject to discipline under section 4301(g) of the Code in that |
| 9 | Respondent, as described in paragraphs 24 to 27 above, created and/or signed documents that |
| 10 | falsely represented the existence or nonexistence of a state of facts. |
| 11 | THIRD CAUSE FOR DISCIPLINE |
| 12 | (Conviction of Substantially Related Crime(s)) |
| 13 | 30. Respondent is subject to discipline under section 4301(1) and/or section 490 of the |
| 14 | Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of |
| 15 | a substantially related crime, in that on or about September 23, 2008, in People v. Tammy Dicaro, |
| 16 | Case No. MS269187A in Monterey County Superior Court, Respondent was convicted as follows |
| 17 | of violating Business and Professions Code section 4324 (Forged Prescription), a misdemeanor: |
| 18 | a. On or about June 4, 2008, based on the conduct described in paragraphs 24 to |
| 19 | 27 above, Respondent was contacted by Salinas Police, and admitted during police interview(s) to |
| 20 | forging prescriptions and/or refills in the name of her boyfriend and using his insurance to pay for |
| 21 | the filling of those prescriptions. She further admitted to taking the drugs for self-use. |
| 22 | b. On or about September 4, 2008, Respondent was charged by criminal complaint |
| 23 | with (1) Business and Professions Code section 4324 (Forged Prescription) and (2) Business and |
| 24 | Professions Code section 4329 (Nonpharmacist Acting as Pharmacist), both misdemeanors. |
| 25 | c. On or about September 23, 2008, Respondent pleaded nolo contendere and was |
| 26 | found guilty of Count One (Forgery of Prescription) a misdemeanor. Imposition of sentence was |
| 27 | suspended in favor of a conditional probation of three (3) years, terms and conditions including 5 |
| 28 | days in jail or Work Alternative Program, retained jurisdiction over restitution, and fines and fees. |
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| 1 | FOURTH CAUSE FOR DISCIPLINE |
| 2 | (Furnishing of Controlled Substance) |
| 3 | 31. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section |
| 4 | 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described |
| 5 | in paragraphs 24 to 27 above, furnished to herself or another without a valid prescription, and/or |
| 6 | conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance. |
| 7 | FIFTH CAUSE FOR DISCIPLINE |
| 8 | (Possession of Controlled Substance) |
| 9 | 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section |
| 10 | 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described |
| 11 | in paragraphs 24 to 27 above, possessed, conspired to possess, and/or assisted in or abetted |
| 12 | possession of, a controlled substance, without a prescription. |
| 13 | SIXTH CAUSE FOR DISCIPLINE |
| 14 | (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge) |
| 15 | 33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, |
| 16 | and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs |
| 17 | 24 to 27 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a |
| 18 | controlled substance, by fraud, deceit, subterfuge, or concealment of material fact. |
| 19 | SEVENTH CAUSE FOR DISCIPLINE |
| 20 | (Making, Uttering and/or Using False or Forged Prescriptions) |
| 21 | 34. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section |
| 22 | 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that |
| 23 | Respondent, as described in paragraphs 24 to 27 above, falsely made, altered, forged, uttered, |
| 24 | published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a |
| 25 | (narcotic) drug, had in her possession a (narcotic) drug secured by a false, forged, fictitious or |
| 26 | altered prescription, or conspired and/or assisted in or abetted any of these acts. |
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| 1 | EIGHTH CAUSE FOR DISCIPLINE |
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| 2 | (Issuance and/or Use of Invalid Prescription(s)) |
| 3 | 35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, |
| 4 | and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in |
| 5 | paragraphs 24 to 27 above, issued prescriptions without authority to do so, obtained or possessed |
| 6 | an invalid prescription, obtained or possessed a controlled substance by means of such invalid |
| 7 | prescription, or conspired and/or assisted in or abetted any of these acts. |
| 8 | NINTH CAUSE FOR DISCIPLINE |
| 9 | (Unprofessional Conduct) |
| 10 | 36. Respondent is subject to discipline under section 4301 of the Code in that |
| 11 | Respondent, as described in paragraphs 24 to 35 above, engaged in unprofessional conduct. |
| 12 | |
| 13 | PRAYER |
| 14 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 15 | and that following the hearing, the Board of Pharmacy issue a decision: |
| 16 | 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64715, |
| 17 | issued to Tammy Lynn Dicaro (Respondent); |
| 18 | 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and |
| 19 | enforcement of this case, pursuant to Business and Professions Code section 125.3; |
| 20 | 3. Taking such other and further action as is deemed necessary and proper. |
| 21 | |
| 22 | DATED: 11/17/09 visia ford |
| 23 | VIRGINIA/HHROLD Executive Officer |
| 24 | Board of Pharmacy Department of Consumer Affairs |
| 25 | State of California Complainant |
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