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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **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 Road**
13 **Moss Landing, CA 95039**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 64715**

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

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

8 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
10 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
11 crime or act shall be considered substantially related to the qualifications, functions or duties of a
12 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
13 licensee or registrant to perform the functions authorized by her license or registration in a
14 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.

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

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

26 15. Health and Safety Code section 11170 provides that no person shall prescribe,
27 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
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 Substances 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.

16 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.

28 ...

1 FIRST CAUSE FOR DISCIPLINE

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(l) 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.

1 EIGHTH CAUSE FOR DISCIPLINE

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)

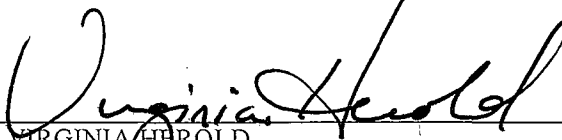
10 36. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 24 to 35 above, engaged in unprofessional conduct.

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



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

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