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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. 3406

13 **BRITNEY IRENE SOARES**
1334 E. ELM COURT
HANFORD, CA 93230

A C C U S A T I O N

14 PHARMACY TECHNICIAN
15 LICENSE NO. TCH 80292

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about December 17, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 80292 to Brittney Irene Soares (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2011, unless renewed.

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JURISDICTION

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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 (b) The board shall discipline the holder of any license issued by the board, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 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 (c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .

17 5. Section 4301 of the Code states, in pertinent part:

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

21 . . .

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

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26 (h) The administering to oneself, of any controlled substance . . .

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

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

...

(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.

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

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

1 7. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2 administrative law judge to direct a licensee found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case.

5 **CONTROLLED SUBSTANCES AT ISSUE**

6 8. “Vicodin” and “Norco” are brand names for hydrocodone with acetaminophen, which
7 is an opiate and a Schedule III controlled substance as designated by Health & Safety Code
8 section 11056, subdivision (e)(4).

9 **OTHER MATTERS**

10 9. Federal law prohibits a pharmacy from employing any person who has been
11 convicted of a felony offense relating to controlled substances. (21 C.F.R. § 1301.76)

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Criminal Conviction)**

14 10. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
15 that Respondent was convicted of a crime substantially related to the qualifications, functions and
16 duties of a licensed pharmacy technician, as follows:

17 11. On or about March 20, 2008, Respondent was convicted on her plea of guilty to one
18 felony count of violating Health and Safety Code section 11173(a)(Obtaining a Controlled
19 Substance by Fraud, Deceit, Misrepresentation or Subterfuge) in *People v. Brittney Irene Soares*
20 (Super. Ct. Tulare County, 2008, No. VCF199904).

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude and Dishonesty)**

23 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
24 that she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.
25 Specifically, Respondent, per her own admission, illegally diverted a total of 60 tablets of
26 Vicodin, while on duty as a registered pharmacy technician, in violation of law. Additionally,
27 Respondent admitted to being responsible for diverting one tablet of hydrocodone-containing
28 medication during the later part of 2007, the exact date of which is not known.

1 THIRD CAUSE FOR DISCIPLINE

2 (Self-Administration of a Controlled Substance)

3 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
4 that she administered a controlled substance to herself. Specifically, on unknown multiple dates,
5 believed to include a date sometime in the later part of 2007, as well as dates believed to be
6 included in the months of January and February of 2008, all the exact dates which are unknown,
7 and per her admission, Respondent self-administered hydrocodone-containing schedule III
8 controlled substances, in violation of law.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Violation of Federal or State Statutes)

11 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
12 (o), in that she violated the statutes of this state regulating controlled substances and dangerous
13 drugs, as set forth in paragraphs 10 and 12 above.

14 FIFTH CAUSE FOR DISCIPLINE

15 (Acts Warranting Denial of a License)

16 15. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
17 that she committed acts that would warrant denial of a license, as set forth in paragraphs 10 and
18 12 above.

19 PRAYER

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

- 22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80292,
- 23 issued to Brittney Irene Soares;
- 24 2. Ordering Brittney Irene Soares to pay the Board of Pharmacy the reasonable costs of
- 25 the investigation and enforcement of this case, pursuant to Business and Professions Code section
- 26 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

10/27/09

Virginia Herold

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

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