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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. 3605

11 **RITA JEANINE GARIBALDI**
12 **230 Catamaran Way**
13 **Vacaville, CA 95688**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 48059**

15 Respondent.

16
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 March 18, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 48059 to Rita Jeanine Garibaldi (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2012, 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 (Code) unless otherwise indicated.

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

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

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

14 STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

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

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

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

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

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

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

14 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
15 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
16 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
17 or subterfuge; or (2) by the concealment of a material fact.

18 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
19 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
20 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

21 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
22 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health
23 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

24 COST RECOVERY

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

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1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 16. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Section 4022 of the Code states, in pertinent part:

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

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

10 ...

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

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

18 FACTUAL BACKGROUND

19 19. Between in or about October 2006 and in or about October 2008, Respondent was
20 employed as a pharmacy technician at Owens Pharmacy No. 7 (PHY 46024) in Napa, CA, where
21 by virtue of her employment she had access to controlled substances and dangerous drugs.

22 20. During the tenure of her employment by Owens Pharmacy No. 7, Respondent used
23 her access to divert/steal controlled substances and dangerous drugs, including **Norco** and/or
24 other **Hydrocodone with APAP** controlled substance/dangerous drug products.

25 21. The exact number of instances of diversion/theft by Respondent, and the full quantity
26 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
27 the course of investigations conducted by the pharmacy and by police, the following were among
28 the observations, admissions, and revelations reported:

1 a. After pharmacy auditors/investigators identified what they believed were thefts
2 by one or more employees between in or about May 2008 and in or about September 2008 of
3 approximately sixty (60) 500-tablet bottles of **Norco** (and/or generic **Hydrocodone**-containing
4 equivalents), they installed surveillance cameras in the pharmacy in late September 2008. The
5 cameras showed Respondent engaged in suspicious behavior with regard to **Hydrocodone** drugs.

6 b. Respondent subsequently admitted to police investigators that sometime during
7 her employment by Owens Pharmacy No. 7, she began taking un-opened bottles (containing 500
8 tablets) of **Norco** (and/or its generic equivalents) and selling them to an individual for a price of
9 \$900.00 per bottle. She said that she did this repeatedly, though did not identify a total number.
10 She said that she was motivated by the money she made in these transactions.

11 c. Subsequent audit(s) of the controlled substances stock of Owens Pharmacy No.
12 7 revealed a shortage of approximately 35,237 tablets of **Norco** and/or **Hydrocodone with APAP**
13 **10/325** (generic **Norco**) for the period from May 2008 through September 2008, and an additional
14 shortage of approximately 70,900 tablets of **Norco** and/or its generic equivalents from April 2007
15 to May 2008, for a total documented shortage/loss of approximately 106,137 tablets.

16
17
18 FIRST CAUSE FOR DISCIPLINE

19 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

20 22. Respondent is subject to discipline under section 4301(f) of the Code, in that
21 Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving
22 moral turpitude, dishonesty, fraud, deceit, or corruption.

23 SECOND CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
28 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7 FOURTH CAUSE FOR DISCIPLINE

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

9 ~~25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,~~
10 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
11 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
12 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Possession or Purchase of Controlled Substance(s) for Sale)

15 26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
16 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraphs 19
17 to 21 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or
18 assisted in or abetted the possession or purchase for sale, of a controlled substance.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Conviction of Substantially Related Crime(s))

21 27. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
22 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
23 substantially related crime(s), in that on or about January 29, 2010, in the criminal case *People v.*
24 *Rita Jeanine Garibaldi*, Case No. CR146087 in Napa County Superior Court, Respondent was
25 convicted on the basis of the conduct described in paragraphs 19 to 21 above of violating Penal
26 Code section 487(a) (Grand theft of personal property over \$400.00), a felony, as follows:

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1 a. On or about May 15, 2009, based on the conduct described in paragraphs 19 to
2 21 above, Respondent was charged by criminal Complaint in Case No. CR146087 with violating
3 Penal Code section 487(a) (Grand theft of personal property over \$400.00), a felony. On or about
4 July 27, 2009, an Information was filed containing the same charge but an amended factual basis.

5 b. On or about January 29, 2010, in Case No. CR146087, Respondent pleaded no
6 contest to violating Penal Code section 487(a) (Grand theft over \$400.00), a felony.

7 c. On or about March 2, 2010, imposition of sentence was suspended in favor of a
8 period of formal probation of three (3) years on terms and conditions including one hundred and
9 twenty (120) days in county jail, fines and fees, and other standard terms and conditions.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

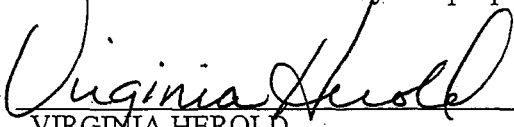
12 28. Respondent is subject to discipline under section 4301 of the Code in that
13 Respondent, as described in paragraphs 19 to 27 above, engaged in unprofessional conduct.

14 PRAYER

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

- 17
- 18 1. Revoking or suspending Pharmacy Technician License No. TCH 48059, issued to
19 Rita Jeanine Garibaldi (Respondent);
 - 20 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 22 3. Taking such other and further action as is deemed necessary and proper.

23 DATED: 9/23/10

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

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