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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. 3663

13 **BRIAN JAMES POKORNY**  
6220 Owensmouth Ave. #103  
Woodland Hills, CA 91367

**A C C U S A T I O N**

14 Pharmacy Technician Registration No. TCH 11175

15 Respondent.

16  
17  
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 (Board).

22 2. On or about December 27, 1993, the Board issued Pharmacy Technician Registration  
23 No. TCH 11175 to Brian James Pokorny (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 October 31, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

6       5.     Section 490 provides that a board may suspend or revoke a license on the ground that  
7 the licensee has been convicted of a crime substantially related to the qualifications, functions, or  
8 duties of the business or profession for which the license was issued..

9       6.     Section 492 states:

10       "Notwithstanding any other provision of law, successful completion of any diversion  
11 program under the Penal Code, or successful completion of an alcohol and drug problem  
12 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
13 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
14 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
15 division, from taking disciplinary action against a licensee or from denying a license for  
16 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
17 record pertaining to an arrest.

18       "This section shall not be construed to apply to any drug diversion program operated by any  
19 agency established under Division 2 (commencing with Section 500) of this code, or any  
20 initiative act referred to in that division."

21       7.     Section 4059, subdivision (a), states:

22       "A person may not furnish any dangerous drug, except upon the prescription of a physician,  
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A  
24 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,  
25 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

26       8.     Section 4060 states:

27       "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer.

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

13 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
14 revoked."

15 10. Section 4301 states, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional  
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19 . . . .

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

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

25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
28 to the extent that the use impairs the ability of the person to conduct with safety to the public the

1 practice authorized by the license.

2 . . . .

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

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

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

25 . . . .

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

1 the board or by any other state or federal regulatory agency. . . .”

2 **REGULATORY PROVISIONS**

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

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

10 **COST RECOVERY**

11 12. Section 125.3 provides that the Board may request the administrative law judge to  
12 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
13 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

14 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

15 13. Norco and Vicodin are trade names for the narcotic substance hydrocodone or  
16 dihydrocodeinone with the non-narcotic substance acetaminophen. They are Schedule III  
17 controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are dangerous  
18 drugs within the meaning of section 4022.

19 **DE SOTO PHARMACY**

20 14. In and between the years 2004 through April 13, 2009, Respondent was employed as  
21 a pharmacy technician at De Soto Pharmacy and Soda Shoppe, 20914 Roscoe Boulevard, Canoga  
22 Park, California 91304 (De Soto Pharmacy). In or about April 2009, De Soto Pharmacy initiated  
23 an internal pharmacy investigation regarding pharmacy losses. On or about April 11, 2009,  
24 Respondent was viewed via video surveillance removing from pharmacy shelves and premises a  
25 500 count bottle of Norco and taking it out to his vehicle. On or about April 13, 2009,  
26 Respondent was confronted and admitted to the theft. On or about April 19, 2009, De Soto  
27 Pharmacy completed its inventory of Hydrocodone, Norco and Vicodin, losses and reported the  
28 loss to police and Federal Drug Enforcement Administration. De Soto's filed "Report of Theft or

1 Loss of Controlled Substances” acknowledged losses of 43,000 tablets of Norco and 62,000  
2 tablets of Vicodin ES, on and between May 27, 2007 and April 15, 2009.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crime)**

5 15. Respondent is subject to disciplinary action under sections 490 and 4301,  
6 subdivision (l), in that on or about September 9, 2009, Respondent sustained a conviction of a  
7 crime substantially related to the qualifications, functions, and duties of a registered pharmacy  
8 technician, as follows:

9 a. On or about September 9, 2009, after pleading guilty, Respondent was convicted of  
10 the interlineated felony count of violating Health and Safety Code section 11377(a) [possession of  
11 a controlled substance] in the criminal proceeding entitled *The People of the State of California v.*  
12 *Brian James Pokorny* (Super. Ct. Los Angeles County, 2009, No. LA062013). The Court placed  
13 Respondent on Deferred Entry of Judgment for 18 months.

14 b. The circumstances underlying the conviction are that on or about April 13, 2009,  
15 Respondent admitted to taking, while employed and on-duty as a pharmacy technician at De Soto  
16 Pharmacy without a valid prescription, a pharmacy stock 500 tablet bottle of Norco, a controlled  
17 substance and dangerous drug, out to his parked vehicle before the pharmacy’s time of closing on  
18 or about April 11, 2009.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Felony Drug Conviction)**

21 16. Respondent is subject to disciplinary action under section 4301, subdivision (k), on  
22 the grounds of unprofessional conduct, in that on or about September 9, 2009, Respondent was  
23 convicted of a felony involving the use, consumption, or self-administration of controlled  
24 substances and dangerous drugs. Complainant refers to and by this reference incorporates the  
25 allegations set forth above in paragraph 15, subparagraphs a and b, inclusive, as though set forth  
26 fully.

27 ///

28 ///



1 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference  
2 incorporates the allegations set forth above in paragraphs 14 – 19, inclusive, as though set forth  
3 fully.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct / Violating Pharmacy Law)**

6 21. Respondent is subject to disciplinary action under section 4301, subdivision (o), in  
7 that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant  
8 refers to and by this reference incorporates the allegations set forth above in paragraphs 14 - 20,  
9 inclusive, as though set forth fully.

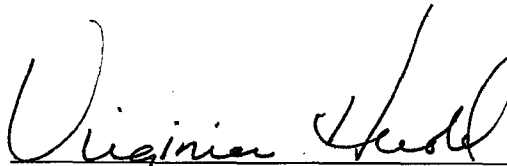
10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
12 and that following the hearing, the Board issue a decision:

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 11175, issued  
14 to Respondent;
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: \_\_\_\_\_

10/5/10



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

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