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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3666

11 **TRACEY LYNNE DAVIS**
12 **1327 Grand Avenue**
13 **Santa Rosa, CA 95404**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 13104**

15 Respondent.

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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 June 13, 1994, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 13104 to Tracey Lynne Davis (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 November 30, 2011, 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 (j) The violation of any of the statutes of this state, of any other state, or of the United
2 States regulating controlled substances and dangerous drugs.

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

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

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

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

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

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

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

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

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

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1 a. On or about August 24, 2009, based on the conduct described in paragraphs 25
2 to 27, Respondent was charged by Felony Complaint in Case No. SCR-568041 with forty-five
3 (45) counts of violating Health and Safety Code section 11368 (Forging prescription), all felonies,
4 and forty-five (45) counts of violating Penal Code section 459 (Burglary), also all felonies.

5 b. On or about October 20, 2009, Respondent pleaded no contest to two counts of
6 violating Health and Safety Code section 11368 (Forging prescription), both felonies [enumerated
7 counts XXXV and LXXXV] and two counts of violating Penal Code section 459 (Burglary), also
8 both felonies [enumerated counts LXXV and XC], and was convicted of the four felonies. The
9 remaining eighty-six (86) counts were dismissed pursuant to the plea.

10 c. On or about December 2, 2009, imposition of sentence was suspended in favor
11 of a period of formal probation of thirty-six (36) months, on terms and conditions including nine
12 (9) months in jail, drug testing, prohibitions on use of alcohol or drugs, fines and fees.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Furnishing of Controlled Substance)

15 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
16 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
17 in paragraphs 25 to 27, furnished to herself or another without a valid prescription, and/or
18 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Possession of Controlled Substance)

21 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
22 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
23 in paragraphs 25 to 27, possessed, conspired to possess, and/or assisted in or abetted possession
24 of, a controlled substance, without a prescription.

25 SEVENTH CAUSE FOR DISCIPLINE

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

27 34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
28 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs

1 25 to 27, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled
2 substance, by fraud, deceit, subterfuge, or concealment of material fact.

3 EIGHTH CAUSE FOR DISCIPLINE

4 (Making, Uttering and/or Using False or Forged Prescriptions)

5 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
6 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
7 Respondent, as described in paragraphs 25 to 27, falsely made, altered, forged, uttered, published,
8 passed, or attempted to pass, a false, forged, fictitious or altered prescription for a (narcotic) drug,
9 had in her possession a (narcotic) drug secured by a false, forged, fictitious or altered
10 prescription, or conspired and/or assisted in or abetted any of these acts.

11 NINTH CAUSE FOR DISCIPLINE

12 (Issuance and/or Use of Invalid Prescription(s))

13 36. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
14 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in
15 paragraphs 25 to 27, issued prescriptions without authority to do so, obtained or possessed an
16 invalid prescription, obtained or possessed a controlled substance by means of such invalid
17 prescription, or conspired and/or assisted in or abetted any of these acts.

18 TENTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 37. Respondent is subject to discipline under section 4301 of the Code in that
21 Respondent, as described in paragraphs 25 to 36, engaged in unprofessional conduct.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 13104, issued to Tracey Lynne Davis (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 9/23/10

Virginia Herold

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

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