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

11 Case No. 3704

12 In the Matter of the Accusation Against:

13 TARA ANN PARKS
a.k.a. TARA GABRIELE, TARA PLEVINSKI
14 1849 Chapulin Lane
Fallbrook, CA 92028

ACCUSATION

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16 Pharmacist License No. RPH 58965

17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 24 2. On or about October 16, 2006, the Board of Pharmacy issued Pharmacist License
25 Number RPH 58965 to Tara Ann Parks, also known as Tara Ann Gabriele and Tara Ann
26 Plevinski (Respondent). The Pharmacist License was in full force and effect at all times relevant
27 to the charges brought herein and will expire on October 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation 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.

5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and

1 duties of the licensee in question, the record of conviction of the crime shall be
2 conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of
4 the crime in order to fix the degree of discipline or to determine if the conviction is
5 substantially related to the qualifications, functions, and duties of the licensee in
6 question.

7 As used in this section, "license" includes "certificate," "permit,"
8 "authority," and "registration."

9 9. Section 4059 of the Code provides in part that a person may not furnish any
10 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
12 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

14 10. Section 4060 of the Code states:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
18 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
19 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
20 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
21 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
22 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
23 section shall not apply to the possession of any controlled substance by a
24 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
25 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
26 practitioner, or physician assistant, when in stock in containers correctly labeled
27 with the name and address of the supplier or producer.

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

11. Section 4301 of the Code states:

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

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

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5 (h) The administering to oneself, of any controlled substance, or the use of
6 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
7 dangerous or injurious to oneself, to a person holding a license under this chapter,
8 or to any other person or to the public, or to the extent that the use impairs the
9 ability of the person to conduct with safety to the public the practice authorized by
10 the license.

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12 (i) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
14 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction
18 shall be conclusive evidence only of the fact that the conviction occurred. The
19 board may inquire into the circumstances surrounding the commission of the
20 crime, in order to fix the degree of discipline or, in the case of a conviction not
21 involving controlled substances or dangerous drugs, to determine if the conviction
22 is of an offense substantially related to the qualifications, functions, and duties of a
23 licensee under this chapter. A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is deemed to be a conviction within the meaning of this
25 provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting
27 probation is made suspending the imposition of sentence, irrespective of a
28 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.

. . . .

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

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **DRUG**

4 18. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,
5 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
6 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
7 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone
8 is used as a narcotic analgesic in the relief of pain.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (March 30, 2009 Convictions for Theft)

11 19. Respondent is subject to disciplinary action under sections 490 and 4301(l) in that she
12 was convicted of crimes that are substantially related to the qualifications, duties, and functions of
13 a pharmacist. The circumstances are as follows:

14 a. On or about March 30, 2009, in a criminal proceeding entitled *People of the*
15 *State of California vs. Tara Gabriele*, in San Diego Superior Court case number CN259625,
16 Respondent was convicted on her plea of guilty of two counts of Penal Code section 484, petty
17 theft, one between January 23, 2009 and January 25, 2009 and the second between February 6,
18 2009 and February 8, 2009. The facts that led to the convictions are as follows:

19 b. Respondent was employed part-time as a pharmacist at Walgreens located in
20 Fallbrook, California, working every other weekend on Fridays, Saturdays, and Sunday. The
21 Walgreens' Pharmacist-in-Charge (PIC) was responsible for performing periodic counts of
22 narcotics, especially the "most prescribed narcotic prescriptions." When the PIC found
23 discrepancies in the hydrocodone generic drugs, an internal investigation was conducted with
24 Loss Prevention. The PIC and the Loss Prevention Supervisor determined that the discrepancies
25 occurred during Respondent's shifts. The PIC then performed regular controlled substance
26 inventory accounts on the Friday before Respondent's shift and on the Monday following
27 Respondent's shifts and discovered several discrepancies among various strengths of
28 hydrocodone pills.

1 c. After learning that Respondent was diverting the drugs, the Pharmacy
2 Supervisor and the Loss Prevention Supervisor met with Respondent on March 20, 2009.
3 Respondent admitted that she had taken 240 pills of hydrocodone and approximately 50 pills of
4 Soma over the past couple of months during her employment at Walgreens. Respondent
5 confessed that she took the pills because she was depressed. Respondent also submitted a written
6 statement to the Loss Prevention Supervisor wherein she admitted that she took hydrocodone and
7 Soma which was not prescribed to her. Respondent was terminated from her employment and the
8 incident was reported to the San Diego County Sheriff's Department, who responded to
9 Walgreens the same day. Respondent voluntarily admitted to a sheriff that she began stealing the
10 hydrocodone medication for her own satisfaction over the previous two months. When asked if
11 she knew exactly how many times she had taken the drugs, Respondent stated "at least eight
12 times." Respondent also stated that she had a medical doctor's prescription for hydrocodone for
13 back problems but that the amount the doctor prescribed for her was not enough to satisfy her,
14 thus she began stealing it from Walgreens. Respondent admitted that she would normally put the
15 pills into her coat pocket as a means of transporting them out of the store. Respondent was
16 arrested for burglary and theft.

17 d. As a result of her conviction, on or about March 30, 2009, Respondent was
18 sentenced to 3 summary years probation, ordered to pay all fines and fees, required to enroll and
19 complete an outpatient treatment program, ordered to stay away from all Walgreens and
20 sentenced to 1 day in custody with credit for time served.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct – Dishonesty and Deceit)

23 20. Respondent is subject to disciplinary action for unprofessional conduct under section
24 4301(f) of the Code in that Respondent's theft constitutes dishonesty and deceit, as is detailed in
25 paragraph 19, incorporated herein by reference.
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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Self-Administration of a Controlled Substance)

3 21. Respondent is subject to disciplinary action for unprofessional conduct under section
4 4301(h) of the Code in that she illegally administered a controlled substance to herself, as set
5 forth in paragraph 19, incorporated herein by reference.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Violation of Chapter)

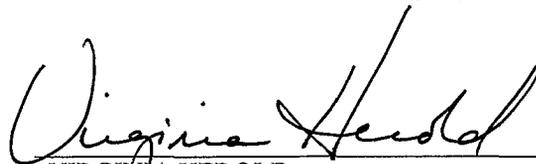
8 22. Respondent is subject to disciplinary action for unprofessional conduct under section
9 4301(o) of the Code in that she violated the Pharmacy Act by furnishing a dangerous drug to
10 herself in violation of Code section 4059 and illegally possessing a controlled substance in
11 violation of Code section 4060, as evidenced by her admissions as set forth in paragraph 19
12 above, incorporated herein by reference.

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 Pharmacist License Number RPH 58965, issued to Tara Ann
17 Parks.
- 18 2. Ordering Tara Ann Parks to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

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24 DATED: 6/17/10



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

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