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

11 In the Matter of the Accusation Against:

Case No. 3711

12 **JOANNEA JACKSON**
13 **P.O. Box 19275**
14 **San Diego, CA 92159**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **54730**

17 Respondent.

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 February 18, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 54730 to Joannea Jackson (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on January 31, 2012, unless renewed.
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1 **JURISDICTION**

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 (Code) unless otherwise indicated.

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

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

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

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

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

19 7. Section 492 of the Code states:

20 Notwithstanding any other provision of law, successful completion of any
21 diversion program under the Penal Code, or successful completion of an alcohol and
22 drug problem assessment program under Article 5 (commencing with section
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
24 agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

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

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8. Section 810 of the Code states:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

....

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

10. Section 4060 of the Code states:

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

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.

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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:

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

....

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

....

(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. Title 16, California Code of Regulations, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to

perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

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

DRUG

15. Tylenol with Codeine #4, a brand name for acetaminophen with codeine, is a Schedule III controlled substance as designated by Health and Safety Code Section 11056(e)(2) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

16. Respondent was employed as a pharmacy technician at a CVS Pharmacy located at 2760 Fletcher Parkway in El Cajon, California from at least June 26, 2006 through December 21, 2006. On or about December 8, 2006, a pharmacist observed Respondent filling her own prescription for a controlled substance, Tylenol with Codeine #4, and an internal investigation ensued. The internal investigation and subsequent Drug Enforcement Administration investigation revealed the following.

17. On or about June 27, 2006, Respondent obtained prescription number 1883484 written by her dentist for Tylenol with Codeine #4, quantity 20 with no refills. Respondent altered the prescription to include 2 refills and a quantity of 30 without authorization from her dentist.

18. On July 21, 2006, Respondent altered prescription number 1883484 in the CVS Pharmacy computer by giving it a new number, 1888947, and had it filled. On August 22, 2006 and August 31, 2006, Respondent refilled prescription number 1888947. She submitted the prescription and refills for reimbursement to Medi-Cal on her own behalf. Respondent's dentist did not authorize, call in or write this prescription or refills.

1 19. On or about September 27, 2006, Respondent entered into the CVS Pharmacy
2 computer system, prescription number 1905330 for Tylenol with Codeine #4, quantity 30, with
3 refills, and had it filled. She had prescription number 1905330 refilled on October 12, 2006. She
4 submitted this prescription and the refill for reimbursement to Medi-Cal on her own behalf.
5 Respondent's dentist did not authorize, call in or write this prescription or refill.

6 20. On October 17, 2006, Respondent entered into the CVS Pharmacy computer system,
7 prescription number 454496 for Tylenol with Codeine #4, quantity 30, with 3 refills, and had it
8 filled. She refilled prescription number 454496 on October 27, 2006, November 14, 2006 and
9 November 23, 2006. The prescription and refills were submitted to Medi-Cal by Respondent for
10 reimbursement on her own behalf. Respondent's dentist did not authorize, call in or write the
11 prescription or refills.

12 21. On December 7, 2006, Respondent wrote prescription number 466299, for Tylenol
13 with Codeine #4, quantity 30, with 1 refill, on a call-in form used to document a call by the
14 pharmacy to the physician following a call to the pharmacy by the patient requesting a refill. She
15 attempted to fill it. Respondent's dentist did not authorize, call in or write this prescription. After
16 a pharmacist observed Respondent filling her own prescription, the pharmacy supervisor
17 researched Respondent's prescription records and discovered that there were no hard copies of
18 Respondent's prescriptions entered into the computer system.

19 22. Respondent admitted in writing to altering a prescription without doctor's approval
20 for two refills in her December 21, 2006 Statement ("Q. How many refills did you add to your
21 prescription without the doctors approval. A. 2 additional refills"). She also admitted orally to a
22 CVS Loss Prevention Manager that she had created and added two refills to prescription number
23 454496 and created and added one refill to prescription number 466299.

24 23. On or about February 7, 2008, in a criminal proceeding entitled *People of the State of*
25 *California v. Joanea Brigitta Jackson*, case no. SCE275753, Respondent pled guilty to violating
26 Health and Safety Code section 11173(a), obtaining controlled substances by fraud, a felony.
27 Pursuant to Penal Code Section 1210.1, Respondent's sentence was suspended and her fines and
28 other requirements were stayed until her completion of a Penal Code 1210 drug program. On

1 February 19, 2009, the Court granted Respondent's Petition under Penal Code section 1210.1(d)
2 on the grounds that Respondent had successfully completed the Penal Code 1210 program, set
3 aside Respondent's plea of guilty and dismissed the case.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

6 24. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
7 on or about July 21, 2006 through December 8, 2006, Respondent violated the California
8 Uniform Controlled Substances Act (Health and Safety Code sections 11000, et seq.) as is more
9 fully described in paragraphs 16-23, above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct-Violation of the Chapter)**

12 25. Respondent is subject to disciplinary action under 4301(o) of the Code for violation
13 of the Pharmacy Act in that on or about July 21, 2006 through December 8, 2006, Respondent
14 furnished to herself and possessed a controlled substance, Tylenol with Codeine #4, without a
15 prescription, in violation of Code sections 4059 and 4060 as is more fully described in paragraphs
16 16-23, above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct- Medi-Cal Fraud)**

19 26. Respondent is subject to disciplinary action under section 810 of the Code in that
20 Respondent submitted false and fraudulent claims to the California Medi-Cal Program for
21 reimbursement as is more fully described in paragraphs 16-23, above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct-Knowingly Making False Documents)**

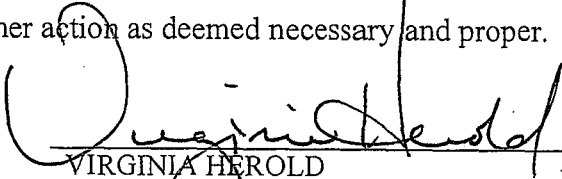
24 27. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
25 on or about July 21, 2006 through December 8, 2006, Respondent knowingly made documents
26 that falsely represent the existence of facts, namely, prescriptions for a controlled substance and
27 submitted those prescriptions to the California Medi-Cal Program for reimbursement as is more
28 fully described in paragraphs 16-23, above.

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 Registration Number TCH 54730, issued to Joannea Jackson;
2. Ordering Joannea Jackson to pay the Board of Pharmacy 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 deemed necessary and proper.

DATED: 8/13/10


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

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