

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 Case No: 3730

13 In the Matter of the Accusation Against:

14 CLARA DIANE DOWNEY
3046 Oceanside Blvd.
Oceanside, CA 92054

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
3748

16 Respondent.
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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about January 27, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 3748 to Clara Diane Downey (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2010, 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 unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, 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 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 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

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

12 10. Section 4060 of the Code states:

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

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 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:

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

.....

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

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

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11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of
13 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
16 evidence of unprofessional conduct. In all other cases, the record of conviction
17 shall be conclusive evidence only of the fact that the conviction occurred. The
18 board may inquire into the circumstances surrounding the commission of the
19 crime, in order to fix the degree of discipline or, in the case of a conviction not
20 involving controlled substances or dangerous drugs, to determine if the conviction
21 is of an offense substantially related to the qualifications, functions, and duties of a
22 licensee under this chapter. A plea or verdict of guilty or a conviction following a
23 plea of nolo contendere is deemed to be a conviction within the meaning of this
24 provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting
26 probation is made suspending the imposition of sentence, irrespective of a
27 subsequent order under Section 1203.4 of the Penal Code allowing the person to
28 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 store manager then requested that Respondent empty her purse, which was located in a locker in
2 the breakroom. When Respondent's purse was emptied, more pills were found. Both pill
3 discoveries were witnessed by the pharmacist and another pharmacy technician.

4 c The CVS loss prevention manager interviewed Respondent in the presence
5 of the store manager. During the interview, Respondent admitted to taking Ambien pills from the
6 pharmacy without payment. Respondent stated that she had been taking the pills for "around one
7 year." Respondent admitted that she took an average of about 10 pills each time and that the
8 thefts occurred about 50 times in the past year. Respondent also admitted that she took 450
9 tablets of Ambien 10 mg and 50 tablets of Ambien 5 mg. However, Respondent stated that the 22
10 Vicodin ES tablets (hydrocodone/APAP) found in her purse were provided to her by her dentist.

11 d. Respondent signed a statement wherein she admitted to taking "Ambien
12 CR, Zolpidem 10 mg and Ambien 5 mg" for insomnia. Respondent stated that the last time she
13 had taken the drugs was "about 1 month ago and today," and about 50 times in the past year.
14 Respondent also admitted in her written statement that she took about 500 pills from CVS
15 without payment by placing the stock bottles in her purse. Respondent also signed a promissory
16 note and notice of civil demand for \$826.58. The loss prevention manager then called the
17 Department of Justice, Bureau of Narcotic Enforcement. A Special Agent with the Bureau
18 identified and booked into evidence the 22 tablets of Vicodin 7.5/500 mg, 8 tablets of Ambien 5
19 mg, 61 tablets of zolpidem tartrate 5 mg, and 49 tablets of Ambien 10 mg. Respondent was
20 subsequently arrested and charged with violation of Penal Code section 460(b), second degree
21 burglary and violation of Health and Safety Code section 11350(a), possession of a controlled
22 substance.

23 e. As a result of her conviction, Respondent was sentenced to 3 days in
24 custody, ordered to pay all fines, fees and restitution, required to participate and complete a drug
25 treatment program pursuant to Penal Code section 1210, with the imposition of the sentence
26 suspended for 3 years.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Dishonesty and Deceit)

21. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(f) of the Code in that Respondent’s theft from CVS Pharmacy constitute dishonesty and deceit, as is detailed in paragraph 20, incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

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

22. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(h) of the Code in that she illegally administered a controlled substance to herself, as is set forth in paragraph 20, incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

23. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code in that she violated California Health and Safety Code sections 11173(a), 11170, and 11350(a), as is set forth in paragraph 20, incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Chapter)

24. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(o) of the Code in that she violated the Pharmacy Act by furnishing a dangerous drug to herself in violation of Code section 4059 and illegally possessing a controlled substance in violation of Code section 4060, as evidenced by her admissions as is set forth in paragraph 20 above, incorporated herein by reference.

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:

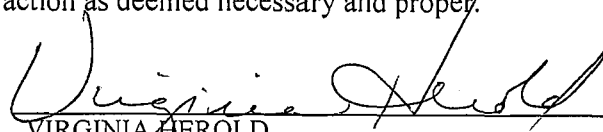
- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 3748, issued to Clara Diane Downey;

1 2. Ordering Clara Diane Downey to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

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6 DATED: _____

7/1/10



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

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