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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 3762
12	HILTON WONG 33272 Martin Street
13	Fremont, CA 94555 A C C U S A T I O N
14	Pharmacist License No. RPH 40772
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 March 17, 1987, the Board of Pharmacy issued Pharmacist License No.
22	RPH 40772 to Hilton Wong (Respondent). The License was in full force and effect at all times
23	relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.
24	JURISDICTION
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26	Consumer Affairs, under the authority of the following laws. All section references are to the
27	Business and Professions Code (Code) unless otherwise indicated.
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4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, 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 9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated 10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of 11 the Code provides that any other license issued by the Board may be canceled by the Board if not 12 renewed within 60 days after its expiration, and will require a new application. 13

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
not be 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.

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

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

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(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.

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

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

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

11 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
12 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
13 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
14 or subterfuge; or (2) by the concealment of a material fact.

15 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
any controlled substance listed in Schedule II (Health and Safety Code section 11055),

17 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

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

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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

24 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code."

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15. Section 4022 of the Code states, in pertinent part:

27 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
28 except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

4 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006."

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16. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and Hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs.

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FACTUAL BACKGROUND

17. Between in or about January 2005 and in or about January 2010, Respondent was
 employed by Kaiser Permanente as a staff pharmacist in at least two pharmacies in its Pleasanton,
 CA facilities, the Kaiser HP South 1 #471 pharmacy (PHY 36679), and the Kaiser HP South 2 #
 472 pharmacy (PHY 36680), where he had access to controlled substances and dangerous drugs.

18. During his Kaiser employment, Respondent used this access to divert/steal, and selfadminister, controlled substances/dangerous drugs, including Hydrocodone with APAP.

18 19. The exact number of instances of diversion/theft by Respondent, and the full quantity
19 of controlled substances or dangerous drugs diverted/stolen, are not known, but investigations by
20 Kaiser and by Board Inspector(s) revealed/reported the following:

a. Between in or about June 2009 and in or about November 2009, Kaiser's Audit
and Compliance Department identified fluctuating variances (shortages) in the stock(s) of generic
Lortab (Hydrocodone with APAP) elixir at both of the pharmacies in which Respondent then
worked as a staff pharmacist (hereinafter Kaiser HP South 1 and Kaiser HP South 2.) Pharmacy
management began to more closely monitor for possible employee diversion/theft.

b. On or about December 31, 2009, an overnight shortage of approximately 30-40
mls of generic Lortab elixir was discovered. Covert surveillance cameras as Kaiser HP South 1
captured Respondent pouring generic Lortab elixir into a bottle and taking the bottle with him.

During subsequent interviews with Kaiser investigator(s) and then with Board 1 c. Inspector(s), Respondent admitted to repeated diversion/theft for self-use of generic Lortab elixir 2 from Kaiser HP South 1. After initially denying similar diversion/theft from Kaiser HP South 2, 3 Respondent later also admitted to a pattern of similar diversion/theft from this pharmacy. Though 4 Respondent was unable to specify or estimate an exact number of instances of diversion/theft, a 5 total length of time during which such diversion/theft had taken place, or a total amount diverted 6 or stolen. Respondent did admit: that he had been diverting/taking generic Lortab elixir from the 7 pharmacy/pharmacies for self-use for over a year; that he had been addicted to Hydrocodone for 8 between two and five years; that his diversion/theft from the pharmacy had begun with his taking 9 Norco returned to the pharmacy for destruction, and had progressed to generic Lortab elixir; that 10 although at first he could not imagine he had taken that much, upon further reflection the amounts 11 reported missing from each of the pharmacies (1,512 mls, approximately 3 pints, from Kaiser HP 12 South 1, and 7,327 mls, approximately 15 pints, from Kaiser HP South 2) were probably accurate 13 counts of the amounts he had diverted/stolen for self-use; and that he had also taken cough drops 14 and lip balm from one or both pharmacies without paying for them. 15 d. On or about February 3, 2010, management staff at Kaiser HP South 1 filed a 16 17 Report of Theft or Loss of Controlled Substances (DEA-106) identifying a shortage attributed to employee pilferage of 1,512 mls of Lortab elixir. On or about February 4, 2010, a similar filing 18 on behalf of Kaiser HP South 2 reported a shortage due to pilferage of 7,327 mls of Lortab elixir. 19 20 21 FIRST CAUSE FOR DISCIPLINE 22 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) 23 20. Respondent is subject to discipline under section 4301(f) of the Code, in that 24 Respondent, as described in paragraphs 17 to 19 above, committed acts involving moral 25 26 turpitude, dishonesty, fraud, deceit, or corruption. /// 27 /// 28 5

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1	SECOND CAUSE FOR DISCIPLINE
2	(Self-Administration of Controlled Substance(s))
3	21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
4	and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
5	described in paragraphs 17 to 19 above, administered a controlled substance to himself.
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7	THIRD CAUSE FOR DISCIPLINE
8	(Furnishing of Controlled Substance(s))
9	22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
11	in paragraphs 17 to 19 above, furnished to himself or another without a valid prescription, and/or
12	conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.
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14	FOURTH CAUSE FOR DISCIPLINE
15	(Possession of Controlled Substance(s))
16	23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17	4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
18	in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted
19	possession of, a controlled substance, without a prescription.
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21	FIFTH CAUSE FOR DISCIPLINE
[.] 22	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)
23	24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24	and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
25	17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
26	controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.
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1	SIXTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct)
3	25. Respondent is subject to discipline under section 4301 of the Code in that
4	Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.
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7	PRAYER
8	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9	and that following the hearing, the Board of Pharmacy issue a decision:
10	1. Revoking or suspending Pharmacist License No. RPH 40772, issued to Hilton Wong
11	(Respondent);
12	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
13	enforcement of this case, pursuant to Business and Professions Code section 125.3;
14	3. Taking such other and further action as is deemed necessary and proper.
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16	DATED: 11/15/10 heging the
17	VIRGINIA HEROLD Executive Officer
18	Board of Pharmacy Department of Consumer Affairs
19	State of California Complainant
20	Complainant
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