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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. 3762

11 **HILTON WONG**
12 **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.

16
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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1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

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

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 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
16 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.

18 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.

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 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.”

26 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:

1 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
2 prescription,’ ‘Rx only,’ or words of similar import.

3 . . .

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.”

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

11 FACTUAL BACKGROUND

12 17. Between in or about January 2005 and in or about January 2010, Respondent was
13 employed by Kaiser Permanente as a staff pharmacist in at least two pharmacies in its Pleasanton,
14 CA facilities, the Kaiser HP South 1 #471 pharmacy (PHY 36679), and the Kaiser HP South 2 #
15 472 pharmacy (PHY 36680), where he had access to controlled substances and dangerous drugs.

16 18. During his Kaiser employment, Respondent used this access to divert/steal, and self-
17 administer, 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:

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

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

1 c. During subsequent interviews with Kaiser investigator(s) and then with Board
2 Inspector(s), Respondent admitted to repeated diversion/theft for self-use of generic **Lortab** elixir
3 from Kaiser HP South 1. After initially denying similar diversion/theft from Kaiser HP South 2,
4 Respondent later also admitted to a pattern of similar diversion/theft from this pharmacy. Though
5 Respondent was unable to specify or estimate an exact number of instances of diversion/theft, a
6 total length of time during which such diversion/theft had taken place, or a total amount diverted
7 or stolen, Respondent did admit: that he had been diverting/taking generic **Lortab** elixir from the
8 pharmacy/pharmacies for self-use for over a year; that he had been addicted to **Hydrocodone** for
9 between two and five years; that his diversion/theft from the pharmacy had begun with his taking
10 **Norco** returned to the pharmacy for destruction, and had progressed to generic **Lortab** elixir; that
11 although at first he could not imagine he had taken that much, upon further reflection the amounts
12 reported missing from each of the pharmacies (1,512 mls, approximately 3 pints, from Kaiser HP
13 South 1, and 7,327 mls, approximately 15 pints, from Kaiser HP South 2) were probably accurate
14 counts of the amounts he had diverted/stolen for self-use; and that he had also taken cough drops
15 and lip balm from one or both pharmacies without paying for them.

16 d. On or about February 3, 2010, management staff at Kaiser HP South 1 filed a
17 Report of Theft or Loss of Controlled Substances (DEA-106) identifying a shortage attributed to
18 employee pilferage of 1,512 mls of **Lortab** elixir. On or about February 4, 2010, a similar filing
19 on behalf of Kaiser HP South 2 reported a shortage due to pilferage of 7,327 mls of **Lortab** elixir.

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22 FIRST CAUSE FOR DISCIPLINE

23 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

24 20. Respondent is subject to discipline under section 4301(f) of the Code, in that
25 Respondent, as described in paragraphs 17 to 19 above, committed acts involving moral
26 turpitude, dishonesty, fraud, deceit, or corruption.

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SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance(s))

21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraphs 17 to 19 above, administered a controlled substance to himself.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 17 to 19 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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