1 2 3 4 5 6 7	EDMUND G. BROWN JR. Attorney General of California ARTHUR D. TAGGART Supervising Deputy Attorney General LESLIE A. BURGERMYER Deputy Attorney General State Bar No. 117576 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 324-5337 Facsimile: (916) 327-8643 Attorneys for Complainant					
8	BEFORE THE BOARD OF PHARMACY					
9	DEPARTMENT OF CONSUMER AFFAIRS					
10	STATE OF CALIFORNIA					
11	In the Matter of the Accusation Against: Case No. 3864					
12	KATHERINE HIRNING JACOB					
13	3110 Christina Avenue Stockton, CA 95204 ACCUSATION					
14	Pharmacy Technician Registration Number TCH 39354					
15						
16	Respondent.					
17						
18						
19	Complainant alleges:					
20	<u>PARTIE</u> S					
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 September 13, 2001, the Board of Pharmacy issued Pharmacy Technician					
24	Registration Number TCH 39354 (license) to Katherine Hirning Jacob (Respondent). The license					
25	was in full force and effect at all times relevant to the charges brought herein and will expire on					
26	November 30, 2010, unless renewed.					
27	///					
28	///					
	1					

Accusation

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 (Code) unless otherwise indicated.
- 4. Section 4300 of the Code states that every license issued by the Board may be suspended or revoked.
- 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or 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.

STATUTORY PROVISIONS

6. 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.
- (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, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- 7. Code section 4022 states, in pertinent part:
 - "Dangerous drug" . . . means any drug . . . unsafe for self-use in humans . . . , 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.
 - (c) Any other drug . . . that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

8. Code section 4060 states, in pertinent part:

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, or a pharmacist pursuant to either Section 4052.1 or 4052.2. 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.

- 9. Health and Safety code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for herself.
 - 10. Health and Safety Code section 11173 states, in pertinent part:
 - (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
 - 11. Health and Safety Code section 11357 states, in pertinent part:
 - (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such tine and imprisonment, or shall be punished by imprisonment in the state prison.

CONTROLLED SUBSTANCES

- Vicodin is a combination drug containing hydrocodone bitartrate and acetaminophen and is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug in that it is dispensed only on prescription. Vicodin is a brand of hydrocodone bitartrate.
- 13. **Marijuana** is a Schedule I controlled substance as designated in Health and Safety Code section 11054, subdivision (d)(13).

COST RECOVERY

14. Section 125.3 of the Code states, 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

1	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and				
2	enforcement of the case.				
3	BACKGROUND				
4	15. On or about January 22, 2010, while employed as a Pharmacy Technician with				
5	Omnicare Pharmacy, Lodi, California, Respondent, submitted to a random drug test at Omnicare				
6	resulting in positive for Marijuana. Respondent did not have a prescription for Marijuana.				
7	Respondent prepared her handwritten statement in which she admitted she had smoked Marijuana				
8	within 30 days of January 22, 2010, and she had ingested one generic Vicodin tablet. She did not				
9	have a prescription for generic Vicodin. Omnicare terminated Respondent from her Pharmacy				
10	Technician position on or about January 26, 2010, pursuant to its policy on drug use.				
11	FIRST CAUSE FOR DISCIPLINE				
12	(Act Involving Moral Turpitude, Dishonesty, Fraud,				
13	Deceit, or Corruption)				
14	16. Respondent is subject to disciplinary action under sections 4300 and 4301,				
15	subdivision (f), of the Code on the grounds of unprofessional conduct in that she committed an				
16	act involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in paragraph 15,				
17	above, incorporated herein by this reference.				
18	SECOND CAUSE FOR DISCIPLINE				
19	(Self-Administered Controlled Substances)				
20	17. Respondent is subject to disciplinary action under sections 4300 and 4301, sub-				
21	division (h), of the Code on the grounds of unprofessional conduct in that she self-administered				
22	Marijuana and Vicodin to the extent or in a manner as to be dangerous or injurious to herself,				
23	another person, or the public, or to the extent her use impaired her ability to conduct with safety				
24	to the public the practice of Pharmacy Technician, as set forth in paragraph 15, above,				
25	incorporated herein by this reference.				
26	///				
27					
28					

///

THIRD CAUSE FOR DISCIPLINE

(Violation of Statute: Self-Administered, Obtained, Furnished, and Illegally Possessed Controlled Substances)

- 18. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), of the Code on the grounds of unprofessional conduct as follows:
- a. Respondent violated Health and Safety Code section 11170 in that she self-administered Marijuana and Vicodin, as set forth in paragraph 15, above, incorporated herein by this reference.
- b. Respondent violated Health and Safety Code section 11170 in that she furnished Marijuana and generic Vicodin to herself, as set forth in paragraph 15, above, incorporated herein by this reference.
- c. Respondent violated Health and Safety Code section 11173, subdivision (a), in that she obtained or attempted to obtain controlled substances, or procured or attempted to procure the administration controlled substances by fraud, deceit, misrepresentation, or subterfuge or by the concealment of a material fact, as set forth in paragraph 15, above, incorporated herein by this reference.
- d. Respondent violated Health and Safety Code section 11357 and Code section 4060 in that she illegally possessed Marijuana without a prescription, as set forth in paragraph 15, above, incorporated herein by this reference.
- e. Respondent violated Code section 4060 in that she illegally possessed generic Vicodin without a prescription, as set forth in paragraph 15, above incorporated herein by this 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 39354, issued to Katherine Hirning Jacob;

1	2. Ordering Katherine Hirning Jacob to pay the Board of Pharmacy the reasonable costs						
2	of the investigation and enforcement of this case, pursuant to Business and Professions Code						
3	section 125.3;						
4	3.	3. Taking such other and further action as deemed necessary and proper.					
5	DATED.	11/17/10	1) /	1			
6	DATED: _	11/17/10	VIRGINIA HEROLD				
7			Executive Officer Board of Pharmacy				
8			Department of Consumer Affairs State of California				
9			Complainant				
10	SA2010102880	/ 10632535					
1							
12							
13	,						
14							
5							
16			•				
17							
18							
20							
21							
22				ì			
23							
24		•					
25							
26							
27							
28			•				
	1						