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7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3975

13 **COOPER JOSEPH WINTERS**
14 **436 5th Street**
15 **Petaluma, CA 94952**

ACCUSATION

16 **Pharmacy Technician License No. TCH**
17 **100859**

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 April 20, 2010, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 100859 to Cooper Joseph Winters (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on April 30, 2012, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the
Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 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 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 7. Section 4402(a) of the Code provides that any pharmacist license that is not renewed
11 within three years following its expiration may not be renewed, restored, or reinstated and shall
12 be canceled by operation of law at the end of the three-year period.

13 8. Section 4402(e) of the Code provides that any other license issued by the Board may
14 be canceled by the Board if not renewed within 60 days after its expiration, and any license
15 canceled in this fashion may not be reissued but will instead require a new application to seek
16 reissuance.

17 STATUTORY AND REGULATORY PROVISIONS

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

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

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

27 10. California Code of Regulations, title 16, section 1770, states:
28

1 “For the purpose of denial, suspension, or revocation of a personal or facility license
2 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
3 crime or act shall be considered substantially related to the qualifications, functions or duties of a
4 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
5 licensee or registrant to perform the functions authorized by her license or registration in a
6 manner consistent with the public health, safety, or welfare.”

7 11. 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 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
10 cocaine.

11 COST RECOVERY

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

15 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16 14. Section 4021 of the Code states:

17 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code.”

19 15. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance
20 as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6), and a dangerous
21 drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

22 FACTUAL BACKGROUND

23 16. On or about May 15, 2010, Respondent was parked on Hemlock Alley in San
24 Francisco, California, an area known by police for auto theft and narcotics use. Officers from the
25 San Francisco Police Department detained and arrested Respondent when he was discovered
26 nervously attempting to put a plastic baggie containing white powder in his pocket. After
27 investigation, the officers determined that the white powder was “cocaine salt.”
28

1 FIRST CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 17. Respondent is subject to discipline under section section(s) 4301(j), (o) and/or 4060
4 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in
5 paragraph 16 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a
6 controlled substance, without a prescription.

7 SECOND CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 18. Respondent is subject to discipline under section 4301 of the Code in that
10 Respondent, as described in paragraph 16 above, engaged in unprofessional conduct.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician License Number TCH 100859, issued
15 to Cooper Joseph Winters;

16 2. Ordering Cooper Joseph Winters to pay the Board of Pharmacy the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.
20

21
22 DATED: 5/27/11

23 Virginia Herold
24 VIRGINIA HEROLD

25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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