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

10 In the Matter of the Accusation Against:

Case No. 4010

11 **KIMBERLY I. COOPER**
12 **880 Campus Drive # 222**
13 **Daly City, CA 94015**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 60577**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about January 13, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 60577 to Kimberly I. Cooper (Respondent). The Pharmacy Technician License
22 was in full force and effect at all times relevant to the charges brought herein and will expire on
23 June 30, 2012, unless renewed.

24
25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 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. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15
16 STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

1 8. California Code of Regulations, title 16, section 1770, provides in pertinent part that a
2 crime or act: shall be considered substantially related to the qualifications, functions or duties of a
3 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
4 licensee or registrant to perform the functions authorized by her license or registration in a
5 manner consistent with the public health, safety, or welfare.

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

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

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

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

16 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
17 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
18 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.
19

20 COST RECOVERY

21 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation of the licensing
23 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
24

25 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26 15. Section 4021 of the Code states:

27 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
28 11053) of Division 10 of the Health and Safety Code.”

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

2 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
3 except veterinary drugs that are labeled as such, and includes the following:

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

6 . . .

7 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
8 prescription or furnished pursuant to Section 4006.”

9 17. **Percocet** is a brand name for a compound of acetaminophen (APAP) and **oxycodone**,
10 a Schedule II controlled substance as designated by Health and Safety Code section 11055(b) and
11 a dangerous drug as designated by Business and Professions Code section 4022. It is also known
12 generically as **Oxycodone with APAP**. It is a narcotic drug.

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

18
19 **FACTUAL BACKGROUND**

20 19. From an unknown start date until on or about July 2, 2010, Respondent was employed
21 as a pharmacy technician at a Rite Aid Pharmacy (PHY 42838) in Pacifica, CA, where by virtue
22 of her employment and licensure she had access to controlled substances and dangerous drugs.

23 20. During the tenure of her employment, Respondent used this access to divert and steal
24 controlled substances and dangerous drugs, including **Percocet/Oxycodone with APAP**.

25 21. The exact number of instances of diversion/theft by Respondent, and the full quantity
26 of controlled substances or dangerous drugs diverted/stolen, are not known, but investigations by
27 Rite Aid Pharmacy and Board Inspector(s) revealed/reported the following:

28 ///

1 a. On or about July 2, 2010, Respondent diverted/stole (90) tablets of **Percocet** (or
2 **Oxycodone with APAP**) from the Rite Aid Pharmacy in which she was employed;

3 b. Video surveillance of the pharmacy showed Respondent conducting the theft;

4 c. On or about August 9, 2010, Rite Aid Pharmacy submitted a Report of Theft or
5 Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a theft of
6 ninety (90) tablets of **Percocet/Oxycodone with APAP**, attributed to Respondent's pilferage.

7 d. On or about December 3, 2010, Rite Aid Pharmacy submitted a second Report
8 of Theft or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing
9 a further loss of 915 tablets of **Hydrocodone with APAP**, also attributed to employee pilferage.

10
11 FIRST CAUSE FOR DISCIPLINE

12 (Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

13 22. Respondent is subject to discipline under section(s) 4301((f) of the Code, in that
14 Respondent, as described in paragraphs 19 to 21 above, committed acts involving moral
15 turpitude, dishonesty, fraud, deceit, or corruption.

16 SECOND CAUSE FOR DISCIPLINE

17 (Furnishing of Controlled Substance(s))

18 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
19 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
20 in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
21 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

22 THIRD CAUSE FOR DISCIPLINE

23 (Possession of Controlled Substance(s))

24 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
25 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
26 in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted
27 possession of, a controlled substance, without a prescription.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 26. Respondent is subject to discipline under section 4301 of the Code in that
10 Respondent, as described in paragraphs 19 to 25 above, engaged in unprofessional conduct.

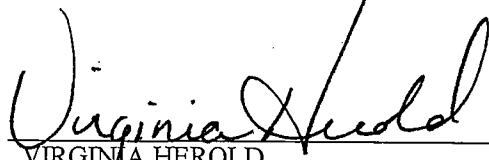
11 PRAYER

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 No. TCH 60577, issued to
- 15 Kimberly I. Cooper (Respondent);
- 16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 18 3. Taking such other and further action as is deemed necessary and proper.

19 DATED: _____

20 7/14/11

21 

22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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