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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. 4059

13 **WANDA KAY COOPER**

7325 Buckeye Drive
14 Fontana, CA 92336

Pharmacy Technician Registration
15 No. TCH 106015

A C C U S A T I O N

16 Respondent.

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 (Board).

21 2. On or about August 16, 2010, the Board issued Pharmacy Technician Registration
22 No. TCH 106015 to Wanda Kay Cooper (Respondent). The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought herein, but expired on June
24 30, 2012, and has been cancelled.

25 **JURISDICTION**

26 3.1 This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

4. Section 118, subdivision (b), 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.

5. Section 490 states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a

1 record pertaining to an arrest.

2 This section shall not be construed to apply to any drug diversion program operated by any
3 agency established under Division 2 (commencing with Section 500) of this code, or any
4 initiative act referred to in that division."

5 7. Section 4060 states:

6 "No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
9 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
12 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
13 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
14 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
15 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
16 labeled with the name and address of the supplier or producer.

17 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
18 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
19 devices."

20 8. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
21 revoked."

22 9. Section 4301 states, in pertinent part:

23 "The board shall take action against any holder of a license who is guilty of unprofessional
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
25 Unprofessional conduct shall include, but is not limited to, any of the following:

26

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
28 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and

1 whether the act is a felony or misdemeanor or not.

2

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

8

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

11

12 (l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
22 a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning
23 of this provision. The board may take action when the time for appeal has elapsed, or the
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
28 indictment..."

1 **REGULATORY PROVISIONS**

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

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

9 **DRUG STATUTES**

10 11. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
11 administer, or furnish a controlled substance for himself."

12 12. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall
13 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
14 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
15 or subterfuge; or (2) by the concealment of a material fact."

16 13. Health and Safety Code section 11350, subdivision (a), states:

17 "Except as otherwise provided in this division, every person who possesses (1) any
18 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
19 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
20 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
21 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
22 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
23 licensed to practice in this state, shall be punished by imprisonment in the state prison."

24 14. Health and Safety Code section 11377, subdivision (a), states:

25 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
26 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
27 Business and Professions Code, every person who possess any controlled substance which is (1)
28 classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision

(d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison."

COST RECOVERY

15. Section 125.3 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 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES/ DANGEROUS DRUGS

16. **Acetaminophen**, is a schedule III controlled substance as designated in Health and Safety Code section 11056 (e)(2) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

17. **Norco**, is the brand name for the combination narcotic, hydrocodone and acetaminophen, and is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e) and is categorized as a dangerous drug pursuant to section 4022.

18. **Vicodin**, is the trade name for a combination drug containing hydrocodone bitartrate (opioid analgesic) and acetaminophen, is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(7) and is categorized as a dangerous drug according to section 4022.

19. **Xanax**, is a brand name for alprazolam, is an anti-anxiety benzodiazepin and is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and is categorized as a dangerous drug pursuant to section 4022(c).

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially-Related Crimes)

20. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,

1 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
2 grounds of unprofessional conduct, in that, Respondent was convicted of a crime substantially
3 related to the qualifications, functions or duties of a registered pharmacy technician which to a
4 substantial degree evidence her present or potential unfitness to perform the functions authorized
5 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

6 a. On or about March, 22, 2011, after pleading *guilty*, Respondent was convicted of one
7 misdemeanor count of violating Business and Professions Code section 4060 [possession of a
8 controlled substance without a prescription], in the criminal proceeding entitled *The People of the*
9 *State of California v. Wanda Kay Wheeler aka Wanda Kay Lewis* (Super. Ct. Orange County,
10 2011, No. 11HF07775). The court sentenced Respondent to 6 days in jail. The circumstances
11 surrounding the conviction are that on or about March 19, 2011, an Orange County Department
12 Sheriff's Officer was dispatched to a Stater Bros Pharmacy in the city of Lake Forest, California,
13 regarding a narcotic violation involving an employee. A pharmacist reported to the officer that
14 for the past few months she had noticed the pharmacy has been missing various narcotics. On
15 March 19, 2011, the pharmacist observed Respondent pull a white plastic bottle out of her purse
16 and swallow two unknown pills. Respondent handed the bottle to the pharmacist and the
17 pharmacist opened the bottle and saw a "cocktail" of narcotics inside. After an inventory of the
18 pills found in the bottle which was labeled "APAP Acetaminophen 500mg 100 Caplets"
19 belonging to Respondent, the pills were identified as:

20 Forty-nine (49) 100 mg. Acetaminophen tablets [non-prescription],
21 Twenty-six (26) Hydrocodone (Vicodin) pills [Schedule III],
22 Seventeen (17) Hydrocodone (Norco) pills [Schedule III],
23 Nine (9) Clonazepam (Xanax) pills [Schedule IV],
24 Eight (8) Cyclobenzapryl (Flexaril) pills [not a schedule drug, prescription only],
25 Five (5) Dizaepam (Valium) pills [Schedule IV],
26 Four (4) Tylenol with Codeine pills [Schedule III], and
27 Three (3) Propoxyphine (Darvon) pills [Schedule IV].

28 Respondent admitted to the officer that she did not have any current or active prescriptions
for any of the pills in her possession. Respondent was arrested and subsequently convicted of
violating Business and Professions Code section 4060.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 ***(Violating Drug Statutes)***

3 25. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (j), on the grounds of unprofessional conduct, for violating provisions of the Health
5 and Safety Code as follows:

6 a. Section 11170, for prescribing, administering and/or furnishing a controlled substance
7 for herself.

8 b. Section 11377, subdivision (a), by possessing controlled substances without a valid
9 prescription.

10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraphs 20 through 24, inclusive, as though set forth fully.

12 **PRAYER**

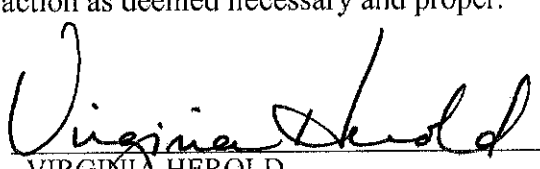
13 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

15 1. Revoking or suspending Pharmacy Technician Registration No. TCH 106015, issued
16 to Wanda Kay Cooper;

17 2. Ordering Wanda Kay Cooper to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to section 125.3; and

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

20
21 DATED: 4/8/13

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