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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. 4086

11 **DARRYL LOUIS WARNER**
12 **1601 C Street**
13 **Antioch, CA 94509**

ACCUSATION

14 **Pharmacy Technician License No. TCH**
15 **55243**

Respondent.

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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 3, 2004, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 55243 to Darryl Louis Warner (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 30, 2013, unless renewed.

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 unless otherwise indicated.

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4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

..."

5. Section 118, subdivision (b), of the Code provides that the expiration 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 AND REGULATORY 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.

...

"(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.

...

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

..."

7. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

8. Section 4022 of the Code states:

1 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
2 humans or animals, and includes the following:

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

5 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
6 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
7 in with the designation of the practitioner licensed to use or order use of the device.

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

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

12 10. Section 4060 of the Code states:

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

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

27 11. California Code of Regulations, title 16, section 1770, states:
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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 his license or registration in a manner
6 consistent with the public health, safety, or welfare."

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

11 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
12 any narcotic drug listed in Schedules III-V, absent a valid prescription.

13 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
14 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health
15 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

16 15. Health and Safety Code section 11352, in pertinent part, makes it unlawful to sell,
17 transport, furnish, administer, or give away, any controlled substance classified in Schedule III,
18 IV, or V which is a narcotic drug, unless upon written prescription of a authorized prescriber.

19 16. Section 125.3 of the Code states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 DRUGS

24 17. Norco is a brand name for a compound of acetaminophen and hydrocodone bitartrate,
25 a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)
26 and a dangerous drug as designated by Business and Professions Code section 4022, used for pain
27 relief.

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1 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled
2 substance, by fraud, deceit, subterfuge, or concealment of material fact.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Possession or Purchase of Controlled Substance(s) for Sale)

5 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
6 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraph 18
7 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or assisted
8 in or abetted the possession or purchase for sale, of a controlled substance.

9 SIXTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct)

11 24. Respondent is subject to discipline under section 4301 of the Code in that
12 Respondent, as described in paragraph 18 above, engaged in unprofessional conduct.

13 PRAYER

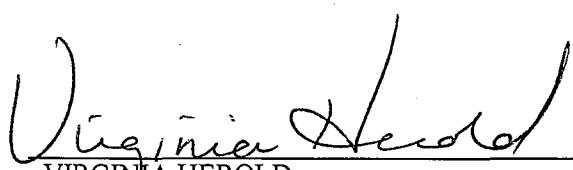
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician License Number TCH 55243, issued
17 to Darryl Louis Warner;

18 2. Ordering Darryl Louis Warner to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;

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

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24 DATED: 5/29/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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