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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. 4110

11 **SHELLEY MACIEL**  
12 **19235 Standish Avenue**  
13 **Hayward, CA 94541**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 53763**

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 29, 2004, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 53763 to Shelley Maciel (Respondent). The Pharmacy Technician License  
22 was in full force and effect at all times relevant to the charges brought herein. The License  
23 expired on October 31, 2011, and has not been renewed. It is in delinquent status.

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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 will require a new application.

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15   STATUTORY AND REGULATORY PROVISIONS

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

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

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

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

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

5 8. California Code of Regulations, title 16, section 1770, states:

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

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

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

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

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

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

25 14. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess  
26 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
27 subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription.

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COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. 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.”

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

“Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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 or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

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

19. **Methylin** and **Ritalin** are among the brand names for **methylphenidate**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug used most commonly for treatment of ADHD and other hyperactivity symptoms.

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FACTUAL BACKGROUND

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2       20. From an unknown start date until on or about January 28, 2010, Respondent worked  
3 as a pharmacy technician at Lodi Memorial Hospital West (HSP 36742) in Lodi, CA, where by  
4 virtue of her employment she had access to controlled substances and dangerous drugs.

5       21. During the tenure of her employment with the hospital pharmacy, Respondent used  
6 her access to divert/steal controlled substances and dangerous drugs, including **Norco** or other  
7 **Hydrocodone with APAP** drugs, and **Methylin**, **Ritalin**, or other **methylphenidate** drugs.

8       22. The exact number of instances of diversion/theft by Respondent, and the full quantity  
9 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of  
10 investigations by Lodi Memorial Hospital and by the Board, the following was discovered:

11           a. On or about January 12, 2010, Respondent's co-worker(s) noted that she had a  
12 disheveled and/or disorderly appearance, seemed to be slurring her words, and could not focus or  
13 productively perform her work tasks. Over the next few days, Respondent's co-worker(s) noted  
14 that Respondent's behavior was altered, as she appeared hyperactive and overly voluble.

15           b. On or about January 19, 2010, Respondent's co-worker(s) noticed her going  
16 back and forth to her coat to get something out of her pockets, going to her purse, and going to  
17 the bathroom more than normal. She seemed nervous. One or more of her co-worker(s) checked  
18 the pocket(s) of her coat, and discovered nine (9) tablets of **Methylin 5mg**.

19           c. On or about January 20, 2010, a physical inventory was performed of (some or  
20 all) controlled substances in the pharmacy. Respondent kept asking why an inventory was being  
21 done, and seemed nervous. In the inventory and/or a subsequent audit, shortages in the following  
22 quantities were found: fifteen (15) tablets of **Methylin 5mg**, fifty-nine (59) tablets of **Ritalin**  
23 **5mg**, and two hundred four (204) tablets of **Hydrocodone with APAP 10/325** (generic **Norco**).

24           d. On or about January 28, 2010, Respondent was confronted/interviewed by Lodi  
25 Memorial Hospital staff. Respondent admitted to diverting and self-administering **Ritalin 5mg**  
26 (and/or its generic equivalent(s)) and **Norco** (and/or its generic equivalent(s)). Respondent did  
27 not specify a time frame or total quantity for her diversion and self-use.

28       ///

1 f. On or about March 3, 2010, Respondent admitted to Board Inspector(s) that she  
2 had diverted/self-used at least thirty (30) tablets of **Ritalin 5mg**, and “some” **Norco**.

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4 FIRST CAUSE FOR DISCIPLINE

5 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

6 23. Respondent is subject to discipline under section 4301(f) of the Code, in that  
7 Respondent, as described in paragraphs 20 to 22 above, committed numerous acts involving  
8 moral turpitude, dishonesty, fraud, deceit, or corruption.

9  
10 SECOND CAUSE FOR DISCIPLINE

11 (Self-Administration of Controlled Substance)

12 24. Respondent is subject to discipline under section 4301(h) of the Code, in that  
13 Respondent, as described in paragraphs 20 to 22 above, administered one or more controlled  
14 substances to herself, including **methylphenidate** and **Hydrocodone with APAP** products.

15  
16 THIRD CAUSE FOR DISCIPLINE

17 (Furnishing of Controlled Substance(s))

18 25. 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 20 to 22 above, furnished to herself or another, and/or conspired to furnish, and/or  
21 assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.

22  
23 FOURTH CAUSE FOR DISCIPLINE

24 (Possession of Controlled Substance(s))

25 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
26 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that  
27 Respondent, as described in paragraphs 20 to 22 above, possessed, conspired to possess, and/or  
28 assisted in or abetted possession of, one or more controlled substance(s), without a prescription.

1 FIFTH CAUSE FOR DISCIPLINE

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

3 27. 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 20 to 22 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.

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8 SIXTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

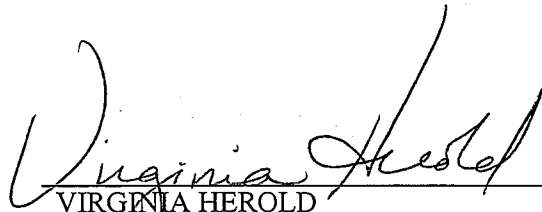
10 28. Respondent is subject to discipline under section 4301 of the Code in that  
11 Respondent, as described in paragraphs 20 to 27 above, engaged in unprofessional conduct.

12  
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 53763, issued
- 17 to Shelley Maciel (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21  
22  
23 DATED: 3/24/12

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

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