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

11 In the Matter of the Accusation Against:

Case No. 4352

12 **TODD CURTISS LAWRENCE**
45 Chantilly
13 Irvine, CA 92620

A C C U S A T I O N

14 **Pharmacist License No. RPH 46439**

15 Respondent.

16
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 August 13, 1993, the Board of Pharmacy issued Pharmacist License
22 Number RPH 46439 to Todd Curtiss Lawrence (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
24 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.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 118, subdivision (b), of the Code 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.

STATUTORY PROVISIONS AND REGULATIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 492 of the Code 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

1 program under Article 5 (commencing with section 23249.50) of
2 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
3 any agency established under Division 2 ([Healing Arts]
4 commencing with Section 500) of this code, or any initiative act
5 referred to in that division, from taking disciplinary action against a
6 licensee or from denying a license for professional misconduct,
7 notwithstanding that evidence of that misconduct may be recorded
8 in a record pertaining to an arrest.

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

13 8. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding
15 conducted by a board within the department pursuant to law to deny
16 an application for a license or to suspend or revoke a license or
17 otherwise take disciplinary action against a person who holds a
18 license, upon the ground that the applicant or the licensee has been
19 convicted of a crime substantially related to the qualifications,
20 functions, and duties of the licensee in question, the record of
21 conviction of the crime shall be conclusive evidence of the fact that
22 the conviction occurred, but only of that fact, and the board may
23 inquire into the circumstances surrounding the commission of the
24 crime in order to fix the degree of discipline or to determine if the
25 conviction is substantially related to the qualifications, functions,
26 and duties of the licensee in question.

27 As used in this section, 'license' includes 'certificate,'
28 'permit,' 'authority,' and 'registration.'

9. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device
unsafe for self-use in humans or animals, 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.

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

(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."

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1 10. Section 4060 of the Code states:

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

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

21 11. Section 4301 of the Code states:

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

27 ...

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

32 ...

33 (h) The administering to oneself, of any controlled
34 substance, or the use of any dangerous drug or of alcoholic
35 beverages to the extent or in a manner as to be dangerous or
36 injurious to oneself, to a person holding a license under this chapter,
37 or to any other person or to the public, or to the extent that the use
38 impairs the ability of the person to conduct with safety to the public
39 the practice authorized by the license.

40 ...

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

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(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(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.

12. Section 4327 of the Code states that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

13. Title 16, California Code of Regulations, section 1669 states in part:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s)

or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee

14. Title 16, California Code of Regulations, section 1770, states:

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

15. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

16. Health and Safety Code section 11173, subdivision (a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

COST RECOVERY

17. Section 125.3 of the Code 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.

DRUGS

18. Hydrocodone and acetaminophen, also known by the brand names Vicodin ES, Norco, and Lortab, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022. It is used to relieve moderate to severe pain.

19. Promethazine with codeine, also known by the brand name Phenergan with codeine syrup, is a Schedule V controlled substance as designated by Health and Safety Code section

1 11058 and is a dangerous drug pursuant to Business and Professions Code section 4022. It is
2 used to relieve coughing.

3 20. Hydrocodone/homatropin, also known by the brand name Hydromet syrup, is a
4 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(3),
5 and is a dangerous drug pursuant to Business and Professions Code section 4022. It is used to
6 relieve coughing.

7 21. Hydrocodone/chlorpheniramine, also known by the brand names Hytan and
8 Tussionex, is a Schedule III controlled substance as designated by Health and Safety Code section
9 11056(e)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022. It
10 is used to relieve coughing.

11 **FACTS**

12 22. Respondent was employed as a pharmacist at a Target pharmacy located in Foothills
13 Ranch, California, from January, 2011 through July 21, 2011. On July 7, 2011, D.I. received
14 notification from Target Headquarters about a possible discrepancy in controlled substance
15 inventory counts at the Foothills Ranch location. After business hours on July 7, 2011, D.I. and
16 an investigation team conducted a controlled substance count and installed covert cameras. A
17 second controlled substance count was conducted on July 17, 2011. Between July 7, 2011 and
18 July 21, 2011, the investigation team had been viewing the store through the surveillance
19 cameras.

20 23. The inventory count revealed a discrepancy of about 10,000 pills since January 2011.
21 The following drugs were unaccounted for between January and July, 2011:

22 Hydrocodone-apap 7.5/750 mg	2,876 tablets
23 Hydrocodone-apap 10/325 mg	8,027 tablets
24 Hudromet Syrup	834 ml
25 Promethazine-codeine syrup	776 ml
26 Hydrocodone-chlorphemiramine suspension	974 ml

27 24. Video surveillance on July 11, 12, 16, 17 and 21, 2011, showed Respondent taking
28 drugs. The video surveillance of July 21, 2011, showed Respondent placing various brands of

1 medication in one bottle, which is not typical procedure in a pharmacy. Respondent placed the
2 bottle aside. The investigators suspected that Respondent was going to hide the pills on his
3 person and attempt to leave the store with them. Investigator D.J. approached Respondent after
4 his lunch break and escorted him to the executive office. D.J. confronted Respondent who
5 admitted to stealing various prescriptions drugs from the pharmacy for at least the past six
6 months. During the interview, Respondent removed several bundles of medication from his sock.
7 The medication had been wrapped in toilet paper. The bundles contained 111 tablets of
8 hydrocodone 10 mg marked "M367"; 89 tablets of hydrocodone 7.5 mg marked "M360"; and, 60
9 tablets of hydrocodone 10 mg marked "Watson 853", which appeared to be the same drugs
10 Respondent was seen placing in a bottle earlier that day.

11 25. The Orange County Sheriff's Department was contacted and arrived at the store.
12 Respondent told the Sheriff's narcotics investigator that he was caught stealing Vicodin. He told
13 the investigator that he had been under a lot of stress and had been stealing prescription narcotics
14 from the Target pharmacy for the past 6-7 months. He stated he became addicted to Vicodin
15 when he started using cough syrup earlier in the year to cope with financial difficulties.
16 Respondent denied selling or giving away any of the pills.

17 26. Respondent told the Sheriff's narcotics investigator that he had planned on taking the
18 medication home, where he hides it in a drawer in his garage to prevent his wife from finding out
19 about his addiction. Respondent stated he consumed about 10 pills each night after each work
20 day. On his days off, Respondent stated he consumes between 20-40 pills a day. Respondent
21 admitted he took the 7.5 and 10 milligram pills because they are the highest strength narcotics
22 that the pharmacy kept unlocked. He admitted to stealing about 100-200 pills from Target every
23 week, but admitted he sometimes stole more often in order to keep a supply on hand.

24 27. After receiving consent to search Respondent's home, investigators found 4 red
25 prescription bottles of cough syrup that were either empty or nearly empty in the garage. The
26 bottles did not have prescriptions labels affixed to them. The investigators also found 165 clear
27 capsules containing a beige powder but the capsules were not marked and could not be identified.

28

1 Respondent was subsequently arrested for possession of narcotics and for stealing medication
2 from his employer.

3 28. In *The People of the State of California v. Todd Curtiss Lawrence*, Orange County
4 Superior Court, Harbor Justice Center, Case No. 11HF2301, Respondent was charged with
5 possession of a controlled substance, specifically hydrocodone, on or between January 1, 2011
6 and July 21, 2011, in violation of Health and Safety Code 11350(a) (hereinafter "Count 1") and,
7 grand theft by an employee in excess of \$950, in violation of Penal Code section 487(b)(3)
8 (hereinafter "Count 2"). Both counts are felonies.

9 29. On April 26, 2012, Count 2 was reduced to a misdemeanor. Respondent pled guilty
10 to both counts. Entry of judgment as to Count 1 was deferred pursuant to Penal Code 1000. The
11 court allowed Respondent to complete the Maximus Program in lieu of the P.C. 1000 program. A
12 hearing on completion of the deferred entry of judgment program is set for October 28, 2013.

13 30. As to Count 2, Respondent was convicted of grand theft on April 26, 2012 and
14 sentenced to 3 years probation, pay \$505 in fees and fines and ordered to stay away from Target
15 pharmacy.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(April 26, 2012 Conviction of Grand Theft)**

18 31. Respondent is subject to disciplinary action under Code sections 490 and 4301,
19 subdivision (l), for conviction of a crime substantially related to the qualifications, functions, and
20 duties of a pharmacist, when Respondent was convicted on April 26, 2012, on his guilty plea of
21 grand theft from his employer on and between January 1, 2011 and July 21, 2011, as more fully
22 set forth in paragraphs 22-30 above and incorporated herein by this reference as though set forth
23 in full.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct - Commission of Any Act Involving**
26 **Moral Turpitude, Dishonesty, Fraud and Deceit)**

27 32. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
28 for the commission of any act involving moral turpitude, dishonesty and deceit, when between

1 January 1, 2011 and July 21, 2011, Respondent stole drugs from his employer for his personal
2 use, as more fully set forth in paragraphs 22-30 above and incorporated herein by this reference as
3 though set forth in full.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Use of Any Dangerous Drug)**

6 33. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
7 for unprofessional conduct in that between January 1, 2011 and July 21, 2011, Respondent stole
8 drugs from his employer and used these drugs on a daily basis to the extent or in a manner as to
9 be dangerous or injurious to himself in that Respondent became addicted to these drugs, as more
10 fully set forth in paragraphs 22-30 above and incorporated herein by this reference as though set
11 forth in full.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Violation of Laws Regarding**
14 **Possession of Controlled Substances)**

15 34. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
16 for violation of Code section 4060, in that on and between January 1, 2011 and July 21, 2011,
17 Respondent unlawfully possessed controlled substances, as more fully set forth in paragraphs 22-
18 30 above and incorporated herein by this reference as though set forth in full.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Violation of Laws Regarding**
21 **Self-Administration of Controlled Substances)**

22 35. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
23 and (o), for violation of Health and Safety Code section 11170, in that on and between January 1,
24 2011 and July 21, 2011, Respondent unlawfully administered and furnished a controlled
25 substance for himself, as more fully set forth in paragraphs 22-30 above and incorporated herein
26 by this reference as though set forth in full.

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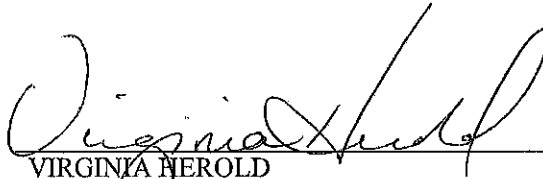
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3. Taking such other and further action as deemed necessary and proper.

DATED:

11/8/12



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

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