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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. 4390

13 **BRENDA MARIE DOBIN**
2519 Royal Ave.
14 Simi Valley, CA 93065

A C C U S A T I O N

15 Pharmacy Technician License No. TCH 99068
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 March 22, 2010, the Board of Pharmacy (Board) issued Pharmacy
22 Technician License No. TCH 99068 to Brenda Marie Dobin (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 expired on April 30, 2013, and has not been renewed.

25 **JURISDICTION**

26 3. 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

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2 4. Section 118, subdivision (b) provides, in pertinent part that the expiration of a license
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 states, in pertinent part:

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

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

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

20 6. Section 4300 provides in pertinent part, that every license issued by the Board is
21 subject to discipline, including suspension or revocation.

22 7. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or
23 suspension of a board-issued license by operation of law or by order or decision of the board or a
24 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
25 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
26 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
27 suspending or revoking the license."
28

1 8. Section 4301 states, in pertinent part:

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

5

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

9

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

12

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

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

8 9. Section 4060 states, in pertinent part:

9 "No person shall possess any controlled substance, except that furnished to a person upon
10 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
11 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
12 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
13 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
14 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
15 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."

16 **REGULATORY PROVISIONS**

17 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

24 **COST RECOVERY**

25 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
26 law judge to direct a licentiate found to have committed a violation or violations of the licensing
27 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
28 case.

1 12. **CONTROLLED SUBSTANCE/DANGEROUS DRUGS**

2 "Norco," is the brand name for the combination narcotic, Hydrocodone and
3 Acetaminophen, and is a Schedule III controlled substance pursuant to Health and Safety Code
4 section 11056, subdivision (e) and is categorized as a dangerous drug pursuant to section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Substantially Related Crime)**

7 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
8 490, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
9 unprofessional conduct, in that Respondent has been convicted of a crime substantially related to
10 the qualifications, functions or duties of a pharmacy technician, as follows:

11 a. On or about February 20, 2013, after pleading guilty, Respondent was convicted of
12 one felony count of violating Health and Safety Code section 11351 [possession for sale of a
13 controlled substance] in the criminal proceeding entitled *The People of the State of California v.*
14 *Brenda Marie Dobin* (Super. Ct. Ventura County, 2013, No. 2012024356.) The Court sentenced
15 Respondent to serve 120 days in Ventura County Jail and place her on 36 months probation, with
16 terms and conditions.

17 b. The circumstances surrounding the conviction are that on or about July 5, 2012,
18 during a parole search of Respondent's home by the Simi Valley Police Department, Respondent
19 was contacted. During the search, officers found a paper bag, containing a large amount of
20 yellow pills, stamped "Watson 853". When officers showed Respondent the pills, she
21 immediately stated that she stole them from the pharmacy where she works, Midvalley Pharmacy.
22 Respondent admitted to stealing the pills so she could sell them. She had heard she could sell the
23 pills for three dollars each. Respondent told officers the pills were Norco and there were 500 of
24 them. She also stated that she had a key that gave her access to the narcotics.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Acts Involving Dishonesty, Fraud, or Deceit)**

27 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), on
28 the grounds of unprofessional conduct, in that while employed as a pharmacy technician at

1 Midvalley Pharmacy, in Simi Valley, CA, Respondent committed acts involving dishonesty,
2 fraud, or deceit with the intent to substantially benefit herself, or substantially injure another.
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraph 12, subparagraphs (a) and (b), inclusive, as though set forth fully.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Possession of a Controlled Substance without a Valid Prescription)**

7 15. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
8 (o), for violating section 4060, on the grounds of unprofessional conduct, in that or on about July
9 5, 2012, Respondent was found to be in possession of a controlled substance without a valid
10 prescription. Complainant refers to, and by this reference incorporates, the allegations set forth
11 above in paragraph 12, subparagraphs (a) and (b), inclusive, as though set forth in fully

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

14 16. Respondent is subject to disciplinary action under section 4301, (o), in that
15 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
16 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
17 in paragraphs 12-15, inclusive, as though set forth fully.

18
19 **PRAYER**

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

- 22 1. Revoking or suspending Pharmacy Technician License No. TCH 99068, issued to
23 Brenda Marie Dobin;
- 24 2. Ordering Brenda Marie Dobin to pay the Board the reasonable costs of the
25 investigation and enforcement of this case, pursuant to section 125.3; and,

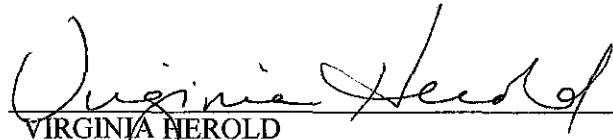
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/18/13



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

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