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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. 4736

12 **LISA M. EBERLE**  
13 **806 Southdale**  
14 **Galt, CA 95632**

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

15 **Pharmacy Technician Registration No. TCH**  
**34600**

16 Respondent.

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18  
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about September 13, 2000, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 34600 to Lisa M. Eberle (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on December 31, 2013, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states, in pertinent part:

9 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
10 govern the denial of licenses on the grounds of:

11 "...

12 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent to  
13 substantially benefit himself or another, or substantially injure another.

14 "(4) Commission of any act which, if done by a licentiate of the business or profession in  
15 question, would be grounds for suspension or revocation of license. . . ."

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

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

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

21 "...

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

24 7. Section 4051 of the Code states, in pertinent part:

25 "(a) Except as otherwise provided in this chapter, it is unlawful for any person to  
26 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to  
27 dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she  
28 is a pharmacist under this chapter. . . ."

1           8.     Section 4059 of the Code states, in pertinent part:

2           "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
6 3640.7. . . ."

7           9.     Section 4060 of the Code states:

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

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

22           10.    Section 4077 of the Code states, in pertinent part, that except as provided in  
23 subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon  
24 prescription except in a container correctly labeled with the information required by Section  
25 4076.

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1           11. Section 4301 of the Code 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           "(a) Gross immorality.

6           "...

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

10           "(g) Knowingly making or signing any certificate or other document that falsely represents  
11 the existence or nonexistence of a state of facts.

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

17           "...

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

20           "...

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

25           "(p) Actions or conduct that would have warranted denial of a license. . . ."

26           12. Section 4324 of the Code states, in pertinent part:

27           "(a) Every person who signs the name of another, or of a fictitious person, or falsely  
28 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription

1 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment  
2 in the state prison, or by imprisonment in the county jail for not more than one year. . . .”

3 **HEALTH AND SAFETY CODE**

4 13. California Health and Safety Code section 11056 states, in pertinent part:

5 “(a) The controlled substances listed in this section are included in Schedule III.

6 “. . .

7 “(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any  
8 material, compound, mixture, or preparation containing any of the following narcotic drugs, or  
9 their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth  
10 below:

11 “. . .

12 (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than  
13 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized  
14 therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the  
15 above specified amounts may not contain as its nonnarcotic ingredients two or more  
16 antihistamines in combination with each other. . . .”

17 14. California Health and Safety Code section 11350 states, in pertinent part:

18 “(a) Except as otherwise provided in this division, every person who possesses (1) any  
19 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
20 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
21 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
22 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
23 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
24 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of  
25 Section 1170 of the Penal Code. . . .”

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**REGULATIONS**

15. Title 21 of the United States Code, section 828 states, in pertinent part:

“(a) Unlawful distribution of controlled substances. It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section. . . .”

16. Title 21 of the United States Code, section 829 states, in pertinent part:

“(b) Schedule III and IV substances. Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner. . . .”

17. Title 21 of the United States Code, section 841 states, in pertinent part:

“(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

“(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

“(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance. . . .”

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**COST RECOVERY**

18. 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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Corrupt Acts)**

3 19. Respondent is subject to disciplinary action under sections 475(a)(4), 4301(f) and (g),  
4 4051(a), and 4324(a) of the Code in that she engaged in unprofessional conduct by conducting  
5 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as  
6 follows:

7 20. From on or about April of 2011 through March of 2012, while employed as a  
8 pharmacy technician at Raley's of Galt, Respondent diverted hydrocodone-containing schedule  
9 III controlled substance medications by entering fraudulent refills (via forged prescription refills)  
10 for medications by using patient profiles of different patients, including "Patient W" and "Patient  
11 M," both of whom are deceased. Drug loss audits showed a loss of at least 984 tablets of  
12 hydrocodone-containing medications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession of a Controlled Substance)**

15 21. Respondent is subject to disciplinary action under sections 4060 and 4301(j) and (o)  
16 of the Code, and section 11350(a) of the California Health and Safety Code, in that she violated  
17 section 4060 of the Code, and California Health and Safety Code sections 11350(a) and 11377(a)  
18 by illegally possessing a controlled substance. The circumstances are as follows:

19 22. From on or about April of 2011 through March of 2012, Respondent diverted  
20 hydrocodone-containing medications from Raley's of Galt. Therefore, Respondent was in  
21 possession of those medications without a prescription for them.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unlawful Self-Administration of Controlled Substances)**

24 23. Respondent is subject to disciplinary action under section 4301(h) of the Code, and  
25 title 21 of the United States Code, sections 829(a) and 841(a)(1) in that she unlawfully self-  
26 administered controlled substances. The circumstances are as follows:

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