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

11 In the Matter of the Accusation Against:

Case No. 4858

12 **JAYME MARIE PALMER**
13 **22 Rhea Court**
Pittsburg, CA 94565

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **102463**

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about May 20, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 102463 to Jayme Marie Palmer (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on May 31, 2014, 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. Code section 4300, subdivision (a), provides that every license issued by the Board
6 may be suspended or revoked.

7 5. Section 4300.1 of the Code states:

8 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9 operation of law or by order or decision of the board or a court of law, the placement of a license
10 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
11 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
12 proceeding against, the licensee or to render a decision suspending or revoking the license."

13 6. Section 4011 of the Code provides that the Board shall administer and enforce both
14 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
15 Act [Health & Safety Code, § 11000 et seq.].

16 STATUTORY AND REGULATORY PROVISIONS

17 7. Section 4301 of the Code states:

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

21 ...

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

25 ...

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

28 ...

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

18 ...

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

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

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1 9. Section 493 of the Code states:

2 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 “As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.’”

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

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

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

21 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 12. Section 4021 of the Code states:

23 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
24 11053) of Division 10 of the Health and Safety Code.”

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

26 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
27 except veterinary drugs that are labeled as such, and includes the following:

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1 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
2 prescription,’ ‘Rx only,’ or words of similar import.

3 ...

4 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006.”

6 14. Section 4022 of the Code states

7 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
8 humans or animals, and includes the following:

9 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
10 prescription,” “Rx only,” or words of similar import.

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

14 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
15 prescription or furnished pursuant to Section 4006.”

16 15. Hydrocodone is a Schedule III controlled substance as designated by Health and
17 Safety Code section 11056, subdivision (e), and a dangerous drug under Code section 4022.
18 Repeated administration of hydrocodone over a course of several weeks may result in psychic and
19 physical dependence.

20 COST RECOVERY

21 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 (Bus. & Prof. Code § 4301)

4 17. Respondent has subjected her Pharmacy Technician's Registration to disciplinary
5 action under Code section 4301 in that Respondent unlawfully took Hydrocodone from her
6 employer, Target. The circumstances are as follows:

7 18. On or about March 5, 2013, at approximately 5:53 p.m., an officer from the Walnut
8 Creek Police Department ("WCPD") was dispatched to the Target store in Walnut Creek,
9 California, in order to investigate a theft report. Dispatch informed the officer that Target Loss
10 Prevention had detained Respondent for theft of narcotics from the pharmacy. Respondent was a
11 Target employee at the time. The WCPD officer arrived at Target and met with the Target
12 investigator. Respondent was also present during the meeting. The investigator informed the
13 officer that the Walnut Creek Target store had been having an on-going issue with the loss of
14 Hydrocodone pills, which prompted the investigator to review surveillance footage from the
15 pharmacy. The investigator discovered footage of Respondent stealing Hydrocodone from the
16 Target pharmacy on or about March 3, 2013. Specifically, on or about March 2, 2013, Target
17 received a shipment of one box of Hydrocodone. Video surveillance showed Respondent
18 opening the box on March 3, 2013, at approximately 8:58 a.m. Respondent removed three bottles
19 from the box. One bottle contained 500 Hydrocodone pills, and the other two bottles contained
20 100 Hydrocodone pills. Three minutes after removing the bottles, Respondent took all three
21 bottles and placed them at a work station in the back of the pharmacy, near a tray full of other
22 prescriptions. The surveillance footage then showed Respondent take one of the bottles of
23 Hydrocodone and conceal it inside her jacket pocket. Respondent was then observed walking to
24 another area of the pharmacy, removing a plastic bag from her jacket, and emptying the bottle of
25 pills into the bag. Respondent was later observed placing the empty bottle of Hydrocodone in the
26 empty bottle area in the back of the pharmacy. Respondent left work that day at approximately
27 1:29 p.m. The investigator showed the officer the surveillance footage that he had described.
28 The bottle that Respondent emptied into the plastic bag was the bottle containing 500

1 Hydrocodone pills. The investigator then signed a citizen's arrest form for misdemeanor
2 embezzlement.

3 19. The WCPD officer arrested Respondent and transported her to the WCPD to
4 complete the booking process. The officer later questioned Respondent about the surveillance
5 footage. Respondent denied having a narcotic addiction problem, and told the officer that she had
6 given the pills to her brother's friend whose name she did not know. Respondent also told the
7 officer that she only took the pills on this one occasion, and she denied having any intent to sell
8 them. She then described to the officer exactly how she had taken the pills from the Target store.

9 SECOND CAUSE FOR DISCIPLINE
10 (Unprofessional Conduct – Conviction)
11 (Bus. & Prof. Code §§ 490, 4301, subd. (l))

12 20. Complainant realleges the allegations contained in paragraphs 17 through 19 above,
13 and incorporates them as if fully set forth.

14 21. Respondent has subjected her Pharmacy Technician's Registration to disciplinary
15 action under Code sections 490 and 4301, subdivision (l), as defined by California Code of
16 Regulations, title 16, section 1770, in that she was convicted of a crime substantially related to the
17 duties, functions, and qualifications of a licensee. Specifically, on or about May 22, 2013, in a
18 criminal matter entitled *The People of the State of California v. Jayme Marie Palmer*, in the
19 Contra Costa County Superior Court, Docket No. 1-16 2194-5, Respondent was convicted by plea
20 of no contest to violation Penal Code section 504 (embezzlement), a misdemeanor. Respondent
21 was sentenced to 45 days in jail, placed on probation for three years, and ordered to stay away
22 from the Target store in Walnut Creek.

23 THIRD CAUSE FOR DISCIPLINE
24 (Unprofessional Conduct – Dishonesty, Fraud, Deceit, or Corruption)
25 (Bus. & Prof. Code § 4301, subd. (f))

26 22. Complainant realleges the allegations contained in paragraphs 17 through 21 above,
27 and incorporates them as if fully set forth.

28 23. Respondent has subjected her Pharmacy Technician's Registration to disciplinary
action under Code section 4301, subdivision (f), in that she has engaged in acts involving

1 dishonesty, fraud, deceit, or corruption. The circumstances are set forth in paragraphs 17 through
2 21, above.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Unlawful Possession of Controlled Substances and Dangerous Drugs)
5 (Bus. & Prof. Code §§ 4301, subs. (j) &(o), 4060)

6 24. Complainant realleges the allegations contained in paragraphs 17 through 23 above,
7 and incorporates them as if fully set forth.

8 25. Respondent has subjected her Pharmacy Technician's Registration to disciplinary
9 action under Code sections 4060, or 4301, subdivision (j), or 4301, subdivision (o), in that she
10 possessed a controlled substance that was not furnished upon a valid prescription or drug order.
11 The circumstances are set forth in paragraphs 17 through 21, above.

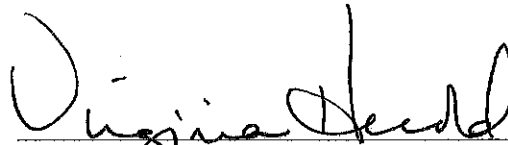
12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
14 Accusation and that following the hearing, the Board of Pharmacy issue a decision:

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 102463,
16 issued to Jayme Marie Palmer;
- 17 2. Ordering Jayme Marie Palmer to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: _____

9/19/13



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

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