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

10 In the Matter of the Accusation Against:
11 **CRYSTAL FRANCINE JOHNSTONE**
12 **6162 Tyden Way**
13 **Paradise, CA 95969**
14 **Pharmacy Technician Registration No. TCH**
104667
15 Respondent.

Case No. 4902

A C C U S A T I O N

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17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 2010, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 104667 to Crystal Francine Johnstone (Respondent). The Pharmacy
23 Technician Registration expired on July 31, 2013, and has not been renewed.

24 **JURISDICTION**

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

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

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

12 5. Section 4300.1 of the Code states:

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

18 6. Section 4301 of the Code states in pertinent part:

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

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

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

5 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
6 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

11 The board may inquire into the circumstances surrounding the commission of the crime, in order to
12 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
13 dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

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

26 7. Section 4060 of the Code provides in pertinent part that no person shall possess any
27 controlled substance, except that furnished to a person upon a valid prescription.

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1 8. Section 4022 of the Code states
2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

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

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

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

11 **DRUGS**

12 9. Hydrocodone is a Schedule III controlled substance as designated by Health and
13 Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Code section 4022.
14 In combination with acetaminophen, it is known by the brand name "Norco."

15 10. Carisoprodol is a Schedule IV controlled substance as designated by Health and Safety
16 Code section 11057, and a dangerous drug pursuant to Code section 4022. It is known under the
17 brand name "Soma."

18 11. Modafinil is a Schedule IV controlled substance as designated by Health and Safety
19 Code section 11057, subdivision (f), paragraph (3), and a dangerous drug pursuant to Code
20 section 4022. It is known under the brand name "Provigil."

21 **COST RECOVERY**

22 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
23 Administrative Law Judge to direct a licentiate found to have committed a violation or violations
24 of the Licensing Act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 **BACKGROUND INFORMATION**

27 13. On the dates in question in this matter, from approximately July 2012, through
28 October 2012, Respondent was employed as a pharmacy technician at a Rite Aid pharmacy in

1 Paradise, California. On or about October 12, 2012, Respondent was observed by a co-worker
2 stealing hydrocodone, brand name Norco, by concealing several pills in the palm of her hand and
3 taking the pills to an office where she appeared to conceal the pills in her purse. On or about
4 October 19, 2012, an asset protection manager reviewed the security videotapes of the area and
5 confirmed the theft. Respondent was confronted and admitted to having been stealing the
6 controlled substances Norco, Soma, and Provigil from the pharmacy for her personal use for
7 approximately two months. Respondent consented to a search and was discovered to be in
8 possession of Norco, Soma, and Provigil without a prescription.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Substantially Related Criminal Conviction)**

11 14. Respondent is subject to disciplinary action under section 4301, subdivision (l) in that
12 on or about April 3, 2012, in the Butte County Superior Court case entitled *People v. Crystal*
13 *Francine Johnstone*, case number CM037981, Respondent was convicted after her plea of no
14 contest to violating Health and Safety Code section 11350, subdivision (a), possession of a
15 controlled substance, a felony. The circumstances are as described in paragraph 13, above.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of Laws Governing Controlled Substance)**

18 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), in that
19 in the time period from August 2012 to October 2012, Respondent violated the laws governing
20 controlled substances. Respondent stole and unlawfully possessed controlled substances in
21 violation of Code section 4060 and Health and Safety Code section 11350, subdivision (a). The
22 circumstances are as described in paragraph 13 and paragraph 14, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Dishonest, Fraudulent, Corrupt, Deceitful Acts)**

25 16. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that
26 on or about October 12, 2012, and on unknown dates prior to October 12, 2012, Respondent
27 knowingly and dishonestly stole controlled substances from the Rite Aid pharmacy where she was
28 then employed. The circumstances are as described in paragraph 13, above.

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FOURTH CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of Controlled Substance in a Manner Dangerous or Injurious to Herself or Others)

17. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that in the time period between August 2012 and October 19, 2012, Respondent unlawfully embezzled and consumed controlled substances without a prescription from the pharmacy where she worked. The circumstances are as described in paragraph 13, above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Laws Governing Pharmacy)

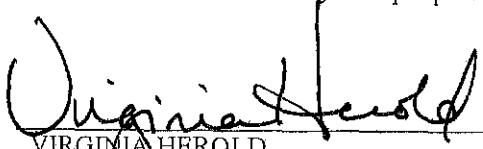
18. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that in the time period from August 2012 to October 2012, Respondent committed acts in violation of the laws governing pharmacy, Code sections 4000, et. seq., as set forth in paragraphs 13-17, above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 104667, issued to Crystal Francine Johnstone
2. Ordering Crystal Francine Johnstone to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/13


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

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