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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 4915

13 **AMY CHERYL WINTERS**
319 E. 20th Street
14 Merced, California 95340

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
120569

16 Respondent.
17

18
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

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

23 2. On or about March 15, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 120569 to Amy Cheryl Winters (Respondent). The Pharmacy
25 Technician Registration expired on April 30, 2013, and has not been 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 states, in pertinent part, that every license issued may be
6 suspended or revoked.

7 5. Code section 4300.1 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 **STATUTORY PROVISIONS**

14 **Business and Professions Code**

15 6. Code section 4022 states, in pertinent part, that "Dangerous drug" means any drug
16 unsafe for self-use in humans or animals, and includes the following:

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

19 ...

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

22 7. Code section 4059 states:

23 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
25 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
27 3640.7."

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1 8. Code section 4060 states, in pertinent part, that no person shall possess any controlled
2 substance, except upon the prescription of an authorized prescriber.

3 9. Code section 4301 states, in pertinent part:

4 The board shall take action against any holder of a license who is guilty of unprofessional
5 conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

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 ...

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

13 ...

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and duties
15 of a licensee under this chapter.

16 ...

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

21 ...

22 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
23 board."

24 ...

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1 **Health and Safety Code**

2 10. Health and Safety Code section 11173 states, in pertinent part, that no person shall
3 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
4 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
5 or subterfuge; or (2) by the concealment of a material fact.

6 11. Health and Safety Code section 11350 states, in pertinent part, that a person may not
7 possess a controlled substance which is a narcotic drug unless upon the prescription of an
8 authorized prescriber.

9 12. Health and Safety Code section 11351 states, in pertinent part, that a person may not
10 possess for sale or purchase for the purpose of sale a controlled substance which is a narcotic
11 drug.

12 13. Health and Safety Code section 11352 states, in pertinent part, that a person may not
13 transport, sell, furnish, or give away, or offer to transport, sell furnish, or give away a controlled
14 substance which is a narcotic drug, unless upon the prescription of an authorized prescriber.

15 **COST RECOVERY**

16 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **DRUGS**

21 15. "Norco" is among the brand names for compounds of varying dosages of
22 acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated
23 by Health and Safety Code section 11056, subdivision (e)(4) and dangerous drug as designated by
24 Business and Professions Code section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of Substantially Related Crime)**

27 16. Respondent is subject to discipline under Code section 4301, subdivision (l), for the
28 conviction of a substantially related crime, in that on or about November 2, 2012, in the matter of

1 *People v. Amy Cheryl Winters* (Super. Ct. Merced County Case No. CRM023485B), Respondent
2 was convicted on her plea of nolo contendere of violating Health and Safety Code section 11351
3 (Possession for Sale of a Controlled Substance - Norco), a felony. The circumstances of the
4 substantially related crime are as follows:

5 (a) On or about June 22, 2012, a Police Officer with the Merced Police Department
6 conducted a traffic stop on a vehicle with non-operational brake lights in which Respondent was
7 traveling in as a passenger. After initiating the traffic stop, the Officer discovered that the driver,
8 Mr. Jackson, was on active probation and open to search and seizure out of Merced County, and
9 that both the driver and Respondent had a suspended/revoked license. Respondent consented to a
10 search of her person and possessions, which resulted in discovery of a brown zippered bag in her
11 purse that had the word "deposit" written on it, with a large quantity of yellow pills inside, later
12 identified as Norco. Respondent first told the Officer that the pills were her personal pills, she
13 had a prescription for them, and collected several prescriptions over the last few months to make
14 that quantity. After being read her Miranda rights, Respondent told Officers that she wanted to be
15 honest and admitted that she had the pills because Mr. Jackson was giving Respondent a ride to
16 Modesto to sell the pills to a friend of Jackson's. Respondent admitted that there were 500 pills
17 in the bag, and that while she had a prescription for Norco, her prescription pills were completely
18 separate from the 500 pills she had in her possession.

19 (b) On or about June 22, 2012, after being transported to Merced Police
20 Department Central Station, Respondent admitted that she worked as a pharmacy technician at the
21 CVS Pharmacy located at the Merced Mall. Respondent further admitted that about six months
22 prior, she started selling her actual prescribed Norco for \$1 a piece. However, after being
23 approached by Mr. Jackson for a larger quantity of Norco, Respondent went to her place of work
24 at CVS pharmacy a couple weeks prior to her arrest and took a prescription bottle belonging to the
25 pharmacy that contained 500 Norco pills inside. She took the bottle to the bathroom, which is out
26 of view of surveillance cameras, and placed the 500 Norco pills into the brown bag that said
27 deposit on it. Respondent then placed the brown bag in her underwear and stole the pills from the
28 pharmacy. Respondent admitted that she went with Mr. Jackson to Modesto and sold the first

1 batch of 500 Norco pills. Respondent further admitted that a couple of days before her arrest on
2 June 22, 2012, Respondent stole another 500 pills in the same manner as she did before, for the
3 purpose of selling them with Mr. Jackson. Respondent and Mr. Jackson were on their way to
4 Modesto to sell the 500 Norco pills when their vehicle was stopped and they were arrested. The
5 pharmacist-in-charge of the CVS pharmacy inside the Merced Mall informed the Officers that an
6 active investigation was going on for the past few month regarding the theft of Norco pills within
7 the pharmacy.

8 **SECOND CAUSE FOR DISCIPLINE**

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

10 17. Respondent is subject to discipline under Code section 4060 in that at times uncertain
11 between approximately January 1, 2012 and June 22, 2012, Respondent unlawfully possessed a
12 controlled substance, to wit: Norco, without authorization or a valid prescription, as more fully set
13 forth above in paragraph 16 and its subparts.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unlawful Possession for Sale of a Controlled Substance)**

16 18. Respondent is subject to discipline under Health and Safety Code section 11351 in
17 that at times uncertain between approximately January 1, 2012 and June 22, 2012, Respondent
18 unlawfully possessed a controlled substance for sale, to wit: Norco, as more fully set forth above
19 in paragraph 15 and its subparts.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unlawful Possession of a Controlled Substance Which is a Narcotic Drug)**

22 19. Respondent is subject to discipline under Health and Safety Code section 11350 in
23 that at times uncertain between approximately January 1, 2012 and June 22, 2012, Respondent
24 unlawfully possessed a controlled substance which is a narcotic drug, to wit: Norco, without a
25 valid prescription, as more fully set forth above in paragraph 16 and its subparts.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Furnishing Dangerous Drugs)**

3 20. Respondent is subject to discipline under Code section 4059 in that at times uncertain
4 between approximately January 1, 2012 and June 22, 2012, Respondent furnished to herself a
5 dangerous drug without a valid prescription, as more fully set forth above in paragraph 16 and its
6 subparts.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, Corruption, Misrepresentation**
9 **or Subterfuge)**

10 21. Respondent is subject to discipline under Code section 4301, subdivision (f), and
11 Health and Safety Code section 11173, subdivision (a), in that at times uncertain between
12 approximately January 1, 2012 and June 22, 2012, Respondent committed acts involving moral
13 turpitude, dishonesty, fraud, deceit, corruption, misrepresentation and/or subterfuge by stealing a
14 controlled substance and dangerous drug, to wit: Norco, while on duty as a licensed pharmacy
15 technician at CVS pharmacy, as more fully set forth above in paragraph 16 and its subparts.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Unlawful Transporting, Selling, Furnishing, or Giving Away of Controlled Narcotic**
18 **Substances)**

19 22. Respondent is subject to discipline under Health and Safety Code section 11352,
20 subdivision (a), in that at times uncertain between approximately January 1, 2012 and June 22,
21 2012, Respondent unlawfully furnished, transported and sold, and offered and attempted to
22 furnish, transport, and sell a controlled substance which is a narcotic, to wit: Norco, as more fully
23 set forth above in paragraph 16 and its subparts.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Interference with an Investigation)**

26 23. Respondent is subject to discipline under Code section 4301, subdivision (q), in that
27 on or about June 11 and 14, 2013, the Board sent written letters to Respondent inquiring about the
28 details of the incident as set forth above in paragraph 16 and its subparts. Respondent engaged in

1 conduct that subverted or attempted to subvert an investigation of the board when she failed to
2 respond to the Board's written inquiries about the details of the incident.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Violation of Statutes Regulating Controlled Substances)**

5 24. Respondent is subject to discipline under Code section 4301, subdivision (j), in that
6 between approximately May 22, 2012 and June 22, 2012, respondent violated statutes regulating
7 controlled substances and dangerous drugs, including: Code section 4059 as set forth above in
8 paragraph 17; Code section 4060 as set forth above in paragraph 20; Health and Safety Code
9 section 11351 as set forth above in paragraph 18; Health and Safety Code section 11350 as set
10 forth above in paragraph 19; and Health and Safety Code section 11352 as set forth above in
11 paragraph 22.

12 **TENTH CAUSE FOR DISCIPLINE**

13 **(Violation of Laws Governing Pharmacy)**

14 25. Respondent is subject to discipline under Code section 4301, subdivision (o) in that
15 between approximately May 22, 2012 and June 22, 2012, Respondent violated laws governing
16 pharmacy as set forth above in paragraphs 16 through 24.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration Number TCH 120569,
21 issued to Amy Cheryl Winters;

22 2. Ordering Amy Cheryl Winters to pay the Board of Pharmacy the reasonable costs of
23 the investigation and enforcement of this case, pursuant to Business and Professions Code section
24 125.3;

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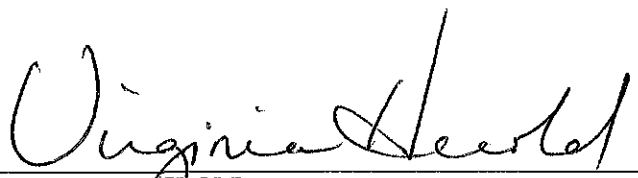
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/19/14



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

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