

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 5196

12 **DANIEL P. SCHICHEL**
13 **23972 Pepperleaf Street**
14 **Murrieta, CA 92563**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
117404

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about December 2, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 117404 to Daniel P. Schichel (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on June 30, 2015, unless renewed.

27 ///

28 ///

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

8 5. Section 4300, subdivision (a), of the Code provides that every license issued by the
9 Board may be suspended or revoked.

10 6. Section 4300.1 of the Code states:

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

15 **STATUTORY PROVISIONS**

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate the
18 rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation furnished
22 by the applicant or licensee.

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 related
25 to the qualifications, functions, or duties of the business or profession for which the license was
issued.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

10. Section 493 of the Code states:

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

discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

11. Section 4022 of the Code states

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

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

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

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

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Section 4060 of the Code states

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

13. Section 4301 of the Code states in pertinent part:

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

...

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

...

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

...

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

.....

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

6 14. Health & Safety Code section 11350 states:

7 Except as otherwise provided in this division, every person who possesses
8 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
9 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
10 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
12 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
13 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
14 to practice in this state, shall be punished by imprisonment pursuant to subdivision
15 (h) of Section 1170 of the Penal Code.

16

17 15. Health & Safety Code section 11170 states:

18 No person shall prescribe, administer, or furnish a controlled substance for himself.

19 **REGULATORY PROVISIONS**

20 16. California Code of Regulations, title 16, section 1769, states:

21

22 (b) When considering the suspension or revocation of a facility or a personal
23 License on the ground that the licensee or the registrant has been convicted of a crime, the
24 board, in evaluating the rehabilitation of such person and his present eligibility for a
25 license will consider the following criteria:

26 (1) Nature and severity of the act(s) or offense(s).

27 (2) Total criminal record.

28 (3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

///

///

1 17. California Code of Regulations, title 16, section 1770, states:

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

7 18. United States Code, title 21, section 843 states, in pertinent part:

8 (a) It shall be unlawful for any person knowingly or intentionally –

9

10 (3) to acquire or obtain possession of a controlled substance by
11 misrepresentation, fraud, forgery, deception, or subterfuge;

12 **COST RECOVERY**

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

19 **DRUGS**

20 20. Tramadol recently became a federal Schedule IV controlled substance and is a
21 dangerous drug pursuant to Business and Professions Code section 4022.

22 21. Vicodin a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule
23 III controlled substance pursuant to Health and Safety Code section 11056(e) and dangerous drug
24 pursuant to Business and Professions Code section 4022.

25 ///

26 ///

27 ///

28 ///

1 **FACTUAL ALLEGATIONS**

2 22. At all times mentioned herein, Respondent was employed as a pharmacy technician at
3 CVS Pharmacy Permit Number 9606 located in Temecula, California.

4 23. Commencing in or about November 2012 and continuing for a year, while on duty as a
5 pharmacy technician, Respondent diverted or stole tramadol and hydrocodone from CVS
6 Pharmacy Permit Number 9606 by putting tablets in his white smock and leaving the pharmacy.

7 24. In or about November 2012 through 2013, Respondent administered approximately
8 40-50 tablets of hydrocodone per month to himself. Respondent did not possess a prescription for
9 that hydrocodone.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(November 13, 2014 Criminal Conviction for Malicious Disturbance –**
12 **on November 14, 2013)**

13 25. Respondent is subject to disciplinary action under Code sections 490 and 4301,
14 subdivision (l) in that he was convicted of a crime substantially related to the qualifications,
15 functions, and duties of a pharmacy technician. The circumstances are as follows:

16 a. On or about November 13, 2014, in the criminal proceeding entitled *People v.*
17 *Daniel Paul Schichel*, Superior Court of Riverside County, Southwest, Case No. SWM1402708,
18 Respondent pled guilty to malicious disturbance, in violation of Penal Code section M415(2), a
19 misdemeanor. Pursuant to Respondent's plea agreement, the court dismissed a charge of
20 embezzlement in violation of Penal Code section M503.

21 b. As a result of the conviction, on or about November 13, 2014, Respondent was
22 sentenced to three years probation, ordered to pay victim restitution, ordered not to have any
23 contact with CVS Pharmacy, and ordered not to work in a pharmacy.

24 c. The facts that led to the conviction are that on or about November 14, 2013,
25 while in the employ of CVS, Respondent unlawfully appropriated to his own use property,
26 Hydrocodone, exceeding Four Hundred Dollars (\$400.00) in value.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

26. Respondent is subject to disciplinary action under Code section 4301(f), in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in paragraphs 22 through 24, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Administration of Controlled Substance or Dangerous Drug to Extent or in Manner as to be Dangerous or Injurious or to Extent Use Impaired Ability to Conduct Practice Safely)

27. Respondent is subject to disciplinary action under Code section 4301(h), in that he administered a controlled substance and dangerous drug to the extent or in a manner as to be dangerous or injurious to himself or others or to the extent that his use impaired his ability to conduct with safety the practice authorized by his license, as set forth in paragraphs 22 through 24 which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Drug Laws)

28. Respondent is subject to disciplinary action under Code section 4301(j), for violating statutes regulating controlled substances and dangerous drugs, including Health & Safety Code section 11350(a) and 11170, in that he possessed and administered a controlled substance without a prescription, as set forth in paragraphs 22 through 24, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Violations of Pharmacy Law)

29. Respondent is subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law, in that Respondent possessed a controlled substance without a prescription in violation of Code section 4060, as set forth in paragraphs 22 through 24, which are incorporated herein by reference.

///
///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

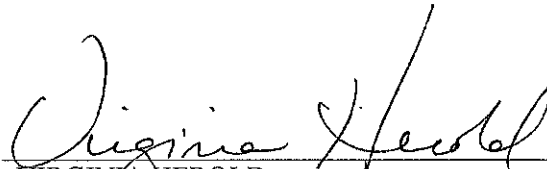
3 30. Respondent is subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that he engaged in the activities described in paragraphs 22 through 24
5 above, which are incorporated herein by reference.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 117404,
10 issued to Daniel P. Schichel;
- 11 2. Ordering Daniel P. Schichel to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: 5/28/15


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

24
25
26
27
28 SD2014707199
70935096.doc