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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. 5486

12 **LORI LEE ELLISON**
405 Walmar Street
13 Bakersfield, CA 93307

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 41237

15 Respondent.

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17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 12, 2002, the Board issued Pharmacy Technician License
23 No. TCH 41237 to Lori Lee Ellison (Respondent). The Pharmacy Technician License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016,
25 unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Section 490 provides that a board may suspend or revoke a license on the ground that
28 the licensee has been convicted of a crime substantially related to the qualifications, functions, or

1 duties of the business or profession for which the license was issued.

2 4. Section 492 states:

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

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

14 5. Section 493 states:

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

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

25 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
26 revoked."

27 7. Section 4300.1 states:

28 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation

1 of law or by order or decision of the board or a court of law, the placement of a license on a
2 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
3 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
4 against, the licensee or to render a decision suspending or revoking the license."

5 8. Section 4301 states, in pertinent part:

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

9

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

13

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

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

23

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

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

13

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

18 **PHARMACY LAW**

19 9. Section 4060 states:

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
27 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer.

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

6 DRUG STATUTES

7 10. Health and Safety Code section 11007 states:

8 " "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
9 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

10 11. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
11 administer, or furnish a controlled substance for himself."

12 12. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
13 possess a controlled substance without a valid prescription.

14 13. United States Code Service, title 21, section 844 states, in pertinent part:

15 "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally
16 to possess a controlled substance unless such substance was obtained directly, or pursuant to a
17 valid prescription . . .

18 "(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,
19 narcotic, or chemical offense" means any offense which proscribes the possession, distribution,
20 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
21 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
22 this title."

23 REGULATORY PROVISION

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

25 "For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

4 15. Section 125.3 states, in pertinent part, that the Board may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

9 16. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as
10 designated by Health and Safety Code section 11057, subdivision (d)(32), and is categorized as a
11 dangerous drug pursuant to section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Conviction of a Substantially Related Crime)**

14 17. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
15 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
16 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
17 related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

18 a. On or about May 29, 2014, after pleading nolo contendere, Respondent was convicted
19 of two misdemeanor counts, Count 1, of violating Penal Code section 487(a) [grand theft; amount
20 exceeding \$950], and Count 2, of violating Penal Code section 503 [embezzlement] in the criminal
21 proceeding entitled *The People of the State of California v. Lori Lee Ellison* (Super. Ct. Kern
22 County, 2014, No. BM841744A). The Court sentenced Respondent to one day in jail, placed her
23 on three years probation, and ordered her to pay victim restitution.

24 b. The circumstances underlying the conviction are that on and between the two months
25 prior and April 8, 2014, while on duty as a pharmacy technician at a CVS pharmacy in Bakersfield,
26 California, Respondent admitted that she took Ambien (Zolpidem) without a valid prescription
27 from the pharmacy inventory and was self-administering the Ambien because she was having
28 difficulty sleeping. Respondent was found to be in possession of two different strengths of

1 Ambien, 5mg and 10mg. CVS pharmacy conducted an inventory of its Ambien stores and filed a
2 Report of Theft or Loss of Controlled Substances with the Drug Enforcement Administration
3 (DEA) for 728 5mg Zolpidem Tartrate and 1,547 10mg Zolpidem Tartrate.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Possession of Controlled Substances/Dangerous Drugs)**

6 18. Respondent is subject to disciplinary action under sections 4300, and 4301,
7 subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on
8 and between the two months prior and April 8, 2014, Respondent violated or attempted to violate
9 the Pharmacy law when she was in possession of Ambien, a controlled substance and dangerous
10 drug, without a valid prescription. The crime or act is substantially related to the qualifications,
11 functions, or duties of a registered pharmacy technician. Complainant refers to and by this
12 reference incorporates the allegations set forth above in paragraph 17, inclusive, as though set
13 forth fully.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 19. Respondent is subject to disciplinary action under sections 4300, 4301,
17 subdivision (h), on the grounds of unprofessional conduct, in that on and between the two months
18 prior and April 8, 2014, Respondent self-administered Ambien, a controlled substance and
19 dangerous drug, without a valid prescription, a manner as to be dangerous or injurious to herself
20 or others while on-duty as a pharmacy technician. Complainant refers to and by this reference
21 incorporates the allegations set forth above in paragraphs 17 and 18, inclusive, as though set forth
22 fully.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violating Drug Statutes)**

25 20. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (j),
26 on the grounds of unprofessional conduct, in that on and between the two months prior and April
27 8, 2014, Respondent violated Health and Safety Code sections 11170 and 11173, subdivision (a),
28 and United States Code Service, title 21, section 844, when she was in possession of and

1 self-administered Ambien, a controlled substance and dangerous drug, without a valid prescription
2 while on-duty as a pharmacy technician. Complainant refers to and by this reference incorporates
3 the allegations set forth above in paragraphs 17 through 19, inclusive, as though set forth fully.

4 **FIFTH CAUSE FOR DISCIPLINE**

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

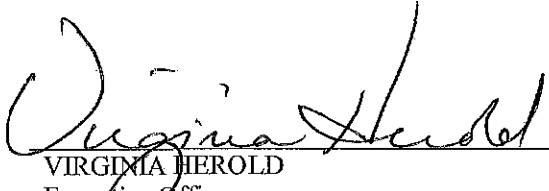
6 21. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
7 (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
8 turpitude, dishonesty, fraud, deceit, or corruption when she took Ambien from pharmacy inventory
9 for self-administration, without a valid prescription and without compensation to CVS pharmacy.
10 Complainant refers to and by this reference incorporates the allegations set forth above in
11 paragraphs 17 through 20, inclusive, as though set forth fully.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician License No. TCH 41237, issued to Lori
16 Lee Ellison;
- 17 2. Ordering Lori Lee Ellison to pay the Board the reasonable costs of the investigation
18 and enforcement of this case, pursuant to section 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: 12/21/15


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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