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

12 In the Matter of the Accusation Against:	Case No. 5833
13 <b>CHRISTOPHER SCOTT NEWELL</b> 14 <b>32862 Brookseed Drive</b> <b>Trabuco Canyon, CA 92679</b> 15 <b>Pharmacy Technician Registration</b> 16 <b>No. TCH 142243</b> 17 Respondent.	<b>A C C U S A T I O N</b>

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 (Board), Department of Consumer Affairs.  
22 2. On or about August 29, 2014, the Board issued Pharmacy Technician Registration  
23 Number TCH 142243 to Christopher Scott Newell (Respondent). The Pharmacy Technician  
24 Registration expired on November 30, 2015, and has not been renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
28 indicated.

1 4. Section 4300(a) of the Code states "Every license issued may be suspended or  
2 revoked."

3 5. Section 4300.1 of the Code states:

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

### 8 STATUTORY PROVISIONS

9 6. Section 4011 of the Code states that "The board shall administer and enforce this  
10 chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section  
11 11000) of the Health and Safety Code)."

12 7. Section 4022 of the Code states:

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

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

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

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

23 8. Section 4026 of the Code states: "'Furnish' means to supply by any means, by sale or  
24 otherwise."

25 9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
26 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
27 veterinarian, or naturopathic doctor.

28 10. Section 4060 of the Code states, in pertinent part, that a person may not possess any  
controlled substance, except that furnished to a person upon the prescription of a physician,  
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

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11. Section 4301 of the Code states:

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. . . .

12. Health and Safety Code section 11173, subdivision (a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13. United States Code, title 21, section 843, subdivision (a)(3) states:

(a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

**REGULATORY PROVISIONS**

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

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

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1 **COSTS**

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

8 **DRUGS**

9 16. Acetaminophen with codeine/APAP, sold commercially as Tylenol #4, is a  
10 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(2),  
11 and is a dangerous drug pursuant to Business and Professions Code section 4022.

12 17. Alprazolam, sold commercially as Xanax, is a Schedule IV controlled substance  
13 under California Health and Safety Code section 11057(d)(1), and is classified as a dangerous  
14 drug pursuant to Business and Professions Code section 4022.

15 18. Tramadol, sold commercially as Ultram, is a Schedule IV controlled substance under  
16 Title 20 of the Code of Federal Regulations section 1308.14, and is classified as a dangerous drug  
17 pursuant to Business and Professions Code section 4022.

18 19. Oxycontin, the controlled-release oral formulation of oxycodone, is a Schedule II  
19 controlled substance as designated by Health and Safety Code section 11055(b)(1)(M), and is a  
20 dangerous drug pursuant to Business and Professions Code section 4022.

21 20. Acetaminophen with oxycodone/APAP, sold commercially as Percocet, is Schedule  
22 II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M), and is a  
23 dangerous drug pursuant to Business & Professions Code section 4022.

24 21. Hydromorphone, sold commercially as Dilaudid, is a Schedule II controlled  
25 substance as designated by Health and Safety Code section 11055(b)(1)(J) and is a dangerous  
26 drug pursuant to Business and Professions Code section 4022.

27 22. Acetaminophen with hydrocodone bitartate/APAP, sold commercially as Vicodin,  
28 Norco, et al. is a Schedule II controlled substance as designated by Health and Safety Code

1 section 11055(b)(1)(I), and is a dangerous drug pursuant to Business and Professions Code  
2 section 4022.

### 3 **FACTUAL ALLEGATIONS**

4 23. On September 29, 2015, the Board received a faxed notification from CVS Pharmacy  
5 #8846 that on September 25, 2015, Respondent was suspected of diverting controlled substances.  
6 As a result of CVS Pharmacy's subsequent investigation into the incident, it was learned that  
7 after a customer refused a bottle of Oxycontin because of the price, Respondent advised the on-  
8 duty pharmacist that he may have dropped four tablets of the Oxycontin on the floor. The on-  
9 duty pharmacist conducted a count of the Oxycontin on the shelf, and noticed five tablets were  
10 missing from the prescription bottle. Respondent appeared to have located one tablet on the  
11 floor, but four tablets were still missing. After viewing security camera videotape, it was  
12 observed that while helping the customer, Respondent was seen looking over his shoulder at the  
13 on-duty pharmacist while placing something into his pocket. Respondent was also reported to  
14 have left the pharmacy multiple times during his shift to use the restroom.

15 24. In an interview with Respondent on September 30, 2015, Respondent admitted to the  
16 CVS Regional Diversion Manager in a signed statement that starting in June 2015, he had taken  
17 various quantities of Alprazolam, Tramadol, Oxycodone/APAP, Hydrocodone APAP,  
18 Hydromorphone, Oxycontin, and Codeine/APAP from two CVS Pharmacy locations (#8846 and  
19 #7079) for his personal use. Respondent also admitted he had consumed two tablets of  
20 Oxycontin 20 mg. twenty minutes prior to the end of his shift on September 25, 2015.  
21 Respondent's employment was terminated.

### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

24 25. Respondent has subjected his registration to discipline under section 4301(f) of the  
25 Code for unprofessional conduct in that he diverted acetaminophen with codeine, alprazolam,  
26 tramadol, carisoprodol, Oxycontin, zolpidem tartrate, acetaminophen with oxycodone,  
27 hydromorphone, morphine sulfate, and acetaminophen with hydrocodone from his employer  
28 using fraud, deceit, and dishonesty, as described in paragraphs 23 and 24, above.

1 SECOND CAUSE FOR DISCIPLINE

2 **(Illegal Self-Administration of a Controlled Substance)**

3 26. Respondent has subjected his registration to discipline under section 4301(h) of the  
4 Code for unprofessional conduct in that Respondent admitted self-administering unprescribed  
5 Oxycontin on September 25, 2015 while on duty at the pharmacy, as described in paragraph 24,  
6 above, conduct that was dangerous or injurious to himself and to others, in that it impaired  
7 Respondent's ability to safely practice as a pharmacy technician.

8 THIRD CAUSE FOR DISCIPLINE

9 **(Violation of California Statutes Regulating Controlled Substances)**

10 27. Respondent has subjected his registration to discipline under section 4301(j) of the  
11 Code for unprofessional conduct in that he knowingly violated Health and Safety Code section  
12 11173(a), Title 21 U.S.C. section 843(a)(3), and the California Uniform Controlled Substances  
13 Act (Health and Safety Code 11000, et seq.), as described in paragraphs 23 and 24, above.

14 FOURTH CAUSE FOR DISCIPLINE

15 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

16 28. Respondent has subjected his registration to discipline under section 4301(o) of the  
17 Code for unprofessional conduct in that he violated Business and Professions Code sections 4059  
18 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section  
19 1700, et seq.), when he obtained controlled substances using fraud and deceit, as described in  
20 paragraphs 23 and 24, above.

21 **PRAYER**

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

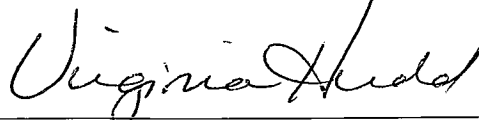
- 24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 142243,  
25 issued to Christopher Scott Newell;
- 26 2. Ordering Christopher Scott Newell to pay the Board of Pharmacy the reasonable  
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
28 Code section 125.3;

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

DATED:

8/16/16



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

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