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

10  
11 In the Matter of the Accusation Against:

Case No. 6053

12 **AMBER L. MCCARD**

13 2034 Allbrook St.  
Lomita, CA 90717

14 and  
3531 White Court  
Torrance, CA 90503

15 Pharmacy Technician License No. TCH  
16 124521

17 Respondent.

**ACCUSATION**

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, Department of Consumer Affairs (Board).  
22 2. On or about September 11, 2012, the Board issued Pharmacy Technician License  
23 No. TCH 124521 to Amber L. McCard (Respondent). The Pharmacy Technician License was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on July 31,  
25 2018, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1  
2       4.     Section 4300, subdivision (a), states that “[e]very license issued may be suspended or  
3 revoked.”

4       5.     Section 4300.1 states:

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

10       6.     Section 4301 states, in pertinent part:

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

14             ....

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

18             ....

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

24             ....

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

27             ....

28             “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the

1 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
2 federal and state laws and regulations governing pharmacy, including regulations established by  
3 the board or by any other state or federal regulatory agency. . . . “

4 **PHARMACY LAW**

5 7. Section 4059, subdivision (a), states:

6 “A person may not furnish any dangerous drug, except upon the prescription of a physician,  
7 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A  
8 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,  
9 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.”

10 8. Section 4060 states:

11 “No person shall possess any controlled substance, except that furnished to a person upon  
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
14 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
15 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
16 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
18 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
19 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
20 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
21 labeled with the name and address of the supplier or producer.

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

25 **DRUG STATUTES**

26 9. Health and Safety Code section 11007 states:

27 ““Controlled substance,” unless otherwise specified, means a drug, substance, or  
28 immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or

1 11058.”

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

4 11. Health and Safety Code section 11350, subdivision (a), states that:

5 “Except as otherwise provided in this division, every person who possesses (1) any  
6 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
7 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
8 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
9 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
10 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
11 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more  
12 than one year, except that such person shall instead be punished pursuant to subdivision (h) of  
13 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense  
14 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of  
15 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290  
16 of the Penal Code.”

17 12. United States Code Service, title 21, section 844 states, in pertinent part:

18 “(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or  
19 intentionally to possess a controlled substance unless such substance was obtained directly, or  
20 pursuant to a valid prescription . . .

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

26 **REGULATORY PROVISION**

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

28 “For the purpose of denial, suspension, or revocation of a personal or facility license

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

#### 6 COST RECOVERY

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

#### 11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 15. Butalbital/APAP/caffeine/codeine, trade name of Fioricet with codeine, is a Schedule  
13 III controlled substance pursuant to Health and Safety Code section 11056(e) and is categorized  
14 as a dangerous drug pursuant to section 4022.

15 16. Hydrocodone/APAP, with brand names of Norco, Vicodin, Vicodin ES and Lortab, is  
16 a Schedule II controlled substance pursuant to Health and Safety Code section 11055 (b)(1) (I)  
17 and is categorized as a dangerous drug pursuant to section 4022.

18 17. Tylenol with Codeine #4, a trade name for acetaminophen with 60 mg of codeine, is a  
19 Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(2) and is  
20 categorized as a dangerous drug pursuant to section 4022.

#### 21 FIRST CAUSE FOR DISCIPLINE

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

23 18. Respondent is subject to disciplinary action under sections 4300 and 4301,  
24 subdivision (f), on the grounds of unprofessional conduct, in that in or about October 2015 and  
25 December 2015, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit,  
26 or corruption when she admittedly diverted controlled substances and dangerous drugs,  
27 merchandise and monetary rewards from her employer's pharmacy inventory, as follows:

28 a. On or about December 21, 2015, Respondent's employer pharmacy performed an

1 inventory audit that resulted in a finding of missing controlled substances inventory.

2 b. On or about January 28, 2016, Respondent admitted to her employer that, in or about  
3 October 2015 and in or about December 2015, she stole 180 tablets of Hydrocodone/APAP  
4 10/325mg, at least 30 tablets of APAP/Codeine #4 and 8 tablets of Butalbital/APAP/Caffeine  
5 50/325/40 for her own consumption when at work for relief of pain and withdrawal symptoms.  
6 In addition, Respondent admitted to stealing other merchandise, water, nutrition bar and candy.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Dangerous Use of Controlled Substances)**

9 19. Respondent is subject to disciplinary action under section 4300, 4301,  
10 subdivision (h), in or about October 2015 and in or about December 2015, Respondent  
11 dangerously administered to herself Hydrocodone/APAP 10/325mg, APAP/Codeine #4 and  
12 Butalbital/APAP/Caffeine 50/325/40, without valid prescriptions. Complainant refers to and by  
13 this reference incorporates the allegations set forth above in paragraph 18, inclusive, as though set  
14 forth fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Drug Statute Violation)**

17 20. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (j),  
18 for violating Health and Safety Code sections 11173, subdivision (a), and 11350, subdivision (a),  
19 and United States Code Service, title 21, section 844, on the grounds of unprofessional  
20 conduct, in that in or about October 2015 and in or about December 2015, while on duty as a  
21 Pharmacy technician, Respondent furnished Hydrocodone/APAP 10/325mg, APAP/Codeine #4  
22 and Butalbital/APAP/Caffeine 50/325/40 to herself, without a valid prescription, which was  
23 obtained or procured by fraud, deceit, misrepresentation, or subterfuge. Complainant refers to  
24 and by this reference incorporates the allegations set forth above in paragraph 18, inclusive, as  
25 though set forth fully.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 **(Pharmacy Law Violations)**

28 21. Respondent is subject to disciplinary action under section 4300, 4301,

1 subdivision (o), for violating section 4059 and 4060, on the grounds of unprofessional conduct, in  
2 that in or about October 2015 and in or about December 2015, while on duty as a Pharmacy  
3 technician, Respondent was in possession of Hydrocodone/APAP 10/325mg, APAP/Codeine #4  
4 and Butalbital/APAP/Caffeine 50/325/40, a controlled substance and dangerous drug, without a  
5 valid prescription. Complainant refers to and by this reference incorporates the allegations set  
6 forth above in paragraph 18 - 20, inclusive, as though set forth fully.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician License No. TCH 124521, issued to  
11 Amber L. McCard
- 12 2. Ordering Amber L. McCard to pay the Board the reasonable costs of the investigation  
13 and enforcement of this case, pursuant to section 125.3; and,
- 14 3. Taking such other and further action as deemed necessary and proper.

15  
16  
17  
18 DATED: 10/7/17

*Virginia Herold*

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

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