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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. 6151

12 **PAUL E. WALLS**
13 **2322 Yorkshire Drive**
Antioch, CA 94531

ACCUSATION

14 **Pharmacy Technician Registration No. TCH 18045**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
21 2. On or about December 20, 1995, the Board issued Pharmacy Technician Registration
22 Number TCH 18045 to Paul E. Walls (Respondent). The Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 February 28, 2019, unless 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 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300 of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 **STATUTORY PROVISIONS**

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
14 not be limited to, any of the following:

15 ...

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

18 ...

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

22 ...

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

25 ...

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

1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Health and Safety Code section 11170 provides that no person shall prescribe,
6 administer, or furnish a controlled substance for himself or herself.

7 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
8 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
9 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
10 or subterfuge; or (2) by the concealment of a material fact.

11 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
12 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
13 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

14 **CONTROLLED SUBSTANCES**

15 13. Section 4021 of the Code states:

16 “Controlled substance” means any substance listed in Chapter 2
17 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

18 14. Section 4022 of the Code states:

19 “Dangerous drug” or “dangerous device” means any drug or device
20 unsafe for self-use, except veterinary drugs that are labeled as such, and includes the
21 following:

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

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

28 (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.

15 15. **Bultabital-Acetaminophen**, also known as Allzital or Phrenilin, is a Schedule III
16 Controlled substance pursuant to California Health and Safety Code section 11056(c)(3). It is a
17
18

1 dangerous drug within the meaning of Code section 4022.

2 **COST RECOVERY**

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

7 **FACTUAL BACKGROUND**

8 17. Respondent was employed as a pharmacy technician at the Kaiser Foundation
9 Hospital Pharmacy in Antioch, California. On multiple occasions beginning in 2013 and
10 continuing until on or about September 15, 2016, Respondent stole packages of Bultabital-
11 Acetaminophen tablets from the pharmacy for his own use. Respondent did not have a
12 prescription for this medication and did not have permission to take or possess it.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Possession of a Controlled Substance)**

15 18. Respondent is subject to discipline under Code sections 4301(j), 4301(o), 4060 and/or
16 Health and Safety Code section 11350, for possession of a controlled substance or substances
17 without a prescription, as described in paragraph 17, above.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)**

20 19. Respondent is subject to discipline under Code sections 4301(j), 4301(o) and/or
21 Health and Safety Code section 11173(a), in that Respondent obtained, conspired to obtain,
22 and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge,
23 or concealment of material fact, as described in paragraph 17, above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Acts Involving Moral Turpitude, Dishonesty or Fraud)**

26 20. Respondent is subject to discipline under Code section 4301(f) for committing an act
27 or acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as described in
28 paragraph 17, above.

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FOURTH CAUSE FOR DISCIPLINE

(Furnishing a Dangerous Drug/Controlled Substance)

21. Respondent is subject to discipline under Code sections 4301(j), 4301(o), 4059, and/or Health and Safety Code section 11170, in that Respondent furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a dangerous drug and/or a controlled substance, as described in paragraph 17, above.

FIFTH CAUSE FOR DISCIPLINE

(Dangerous Use of Drugs)

22. Respondent is subject to discipline under Code section 4301, subdivision (h), in that he administered to herself or used controlled substances in a manner dangerous or injurious to himself, others, or to the extent that her ability to safely practice as a registered pharmacy technician was impaired, as described in paragraph 17, above.

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18045, issued to Paul E. Walls;
- 2. Ordering Paul E. Walls to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 11/6/17

Virginia Herold

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