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5 **BEFORE THE**
6 **BOARD OF PHARMACY**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 3302

10 **TRACY LYNN STORMS**
11 1307 West Oak Street
12 Burbank, CA 91506

DEFAULT DECISION AND ORDER

13 **Pharmacy Technician License No. TCH 76085**

[Gov. Code, §11520]

Respondent.

14 FINDINGS OF FACT

15 1. On or about October 27, 2009, Complainant Virginia Herold, in her official capacity
16 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
17 Accusation No. 3302 against Tracy Storms (Respondent) before the Board of Pharmacy.

18 2. On or about May 9, 2007, the Board of Pharmacy (Board) issued Pharmacy
19 Technician License No. TCH 76085 to Respondent. The License was in full force and effect at
20 all times relevant to the charges brought herein, and will expire on November 30, 2010, if not
21 renewed.

22 3. On or about November 6, 2009, Maria L. Camacho, an employee of the Department
23 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3302, a
24 Statement to Respondent, two copies of a form Notice of Defense, a Request for Discovery, and
25 copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of
26 record with the Board: 541 N. Naomi Street, #B, Burbank, CA 91505. Copy of the Accusation
27 are attached as exhibit A, and are incorporated herein by reference.
28

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c).

3 5. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
5 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
6 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
7 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
9 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3302.

10 7. California Government Code section 11520 states, in pertinent part:

11 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
12 agency may take action based upon the respondent's express admissions or upon other evidence
13 and affidavits may be used as evidence without any notice to respondent.

14 8. Pursuant to its authority under Government Code section 11520, the Board finds
15 Respondent is in default. The Board will take action without further hearing and, based on the
16 evidence on file herein, finds that the allegations in Accusation No. 3302 are true.

17 9. The total costs for investigation and enforcement in connection with the Accusation
18 are \$6,275.00 as of February 10, 2010.

19
20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Tracy Storms has subjected her
22 Pharmacy Technician License No. TCH 76085 to discipline.

23 2. A copy of the Accusation is attached.

24 3. The agency has jurisdiction to adjudicate this case by default.

25 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
26 License based upon the following violations alleged in the Accusation:

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1 a. In violation of Business and Professions Code section 4301(f), in conjunction with
2 California Code of Regulations, title 16, section 1770, Respondent committed an act involving
3 dishonesty;

4 b. In violation of Business and Professions Code sections 4301(o), in conjunction with
5 Business and Professions Code sections 4060 and 4059, Respondent possessed a controlled
6 substance and dangerous drug without a prescription; and,

7 c. In violation of Business and Professions Code section 4301(j), Respondent violated
8 state laws regulating controlled substances.

9 ORDER

10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 76085, heretofore
11 issued to Respondent Tracy Storms, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on _____.

17 It is so ORDERED _____

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19 _____
20 FOR THE BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS

22 Attachment: Exhibit A: Accusation No. 3302
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1 a. In violation of Business and Professions Code section 4301(f), in conjunction with
2 California Code of Regulations, title 16, section 1770, Respondent committed an act involving
3 dishonesty;

4 b. In violation of Business and Professions Code sections 4301(o), in conjunction with
5 Business and Professions Code sections 4060 and 4059, Respondent possessed a controlled
6 substance and dangerous drug without a prescription; and,

7 c. In violation of Business and Professions Code section 4301(j), Respondent violated
8 state laws regulating controlled substances.

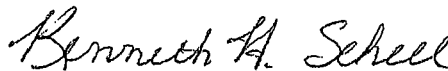
9 ORDER

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11 issued to Respondent Tracy Storms, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on May 26, 2010.

17 It is so ORDERED April 26, 2010.

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KENNETH H. SCHELL, BOARD PRESIDENT
20 FOR THE BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS

22 Attachment: Exhibit A: Accusation No. 3302
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Exhibit A
Accusation Packet No. 3302

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7
8

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

12 In the Matter of the Accusation Against:

Case No. 3302

13 **TRACY LYNN STORMS**
14 **1307 W. Oak Street**
Burbank, CA 91506

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 76085**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 9, 2007, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. 76085 to Tracy Lynn Storms (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2010, unless renewed.

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1 JURISDICTION

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

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/
6 surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to
7 proceed with a disciplinary action during the period within which the license may be renewed,
8 restored, reissued or reinstated.

9 5. Section 4059, subdivision (a) states, in pertinent part:

10 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
11 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
12 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
13 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

14 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
15 subject to discipline, including suspension or revocation.

16 7. Section 4301 of the Code states:

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

20

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

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 . . .

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

5 8. Section 4060 of the Code states, in pertinent part:

6 “No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 ...”

9 **REGULATORY PROVISIONS**

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

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

17 **COST RECOVERY**

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

22 **CONTROLLED SUBSTANCES**

23 11. Hydrocodone combined with acetaminophen is a Schedule III narcotic substance
24 pursuant to Health and Safety Code section 11056(e)(4). Vicodin and Norco are trade/brand
25 names for the combination drugs containing hydrocodone and acetaminophen. Hydrocodone is
26 categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

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1 STATE DRUG STATUTES

2 12. Health and Safety Code section 11007 states that "[c]ontrolled substance,' unless
3 otherwise specified, means a drug, substance, or immediate precursor which is listed in any
4 schedule in Section 11054, 11055, 11056, 11057, or 11058."

5 13. Health and Safety Code section 11173 states, in pertinent part:

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

9 14. Health and Safety Code section 11350, subdivision (a), states:

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

17 FIRST CAUSE FOR DISCIPLINE

18 (Committed Dishonest Act)

19 15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
20 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
21 unprofessional conduct, in that Respondent committed an act involving dishonesty, as follows:

22 16. On or about November 12, 2007, while employed as a pharmacy technician at Jeffrey
23 Goodman Pharmacy in Hollywood, California, Respondent took one bottle containing 94 tablets
24 of Hydrocodone Bitartrate and Acetaminophen 10mg-325 mg. from her place of employment,
25 without her employer's consent and without a prescription. When confronted by Raquel
26 Sperrazzo, the managing pharmacist for Jeffrey Goodman Pharmacy, Respondent admitted taking
27 the bottle. Respondent led Ms. Sperrazzo to the parking lot to Respondent's vehicle. Respondent
28 opened the driver's door and reached in to the center console and recovered a bottle of .

1 Hydrocodone Bitartrate and Acetaminophen 10 mg – 325 mg. Respondent was arrested by the
2 Los Angeles Police Department. No court action was pursued.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of Controlled Substance and Dangerous Drug)**

5 17. Respondent has subjected her license to disciplinary action under section 4301,
6 subdivision (o), on the grounds of unprofessional conduct, as follows:

7 a. Respondent violated section 4060 of the Code, in that on or about November 12,
8 2007, Respondent took Hydrocodone Bitartrate and Acetaminophen, a controlled substance, from
9 her place of employment, without a prescription, as set forth in paragraph 16, above.

10 b. Respondent violated section 4059, subdivision (a), of the Code in that on or about
11 November 12, 2007, Respondent took Hydrocodone Bitartrate and Acetaminophen, a dangerous
12 drug, from her place of employment, without a prescription, as set forth in paragraph 16, above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Violation of State Laws Regulating Controlled Substances)**

15 18. Respondent has subjected her license to disciplinary action under section 4301,
16 subdivision (j), on the grounds of unprofessional conduct, as follows:

17 a. Respondent violated Health and Safety Code section 11350, subdivision (a), in that
18 on or about November 12, 2007, Respondent possessed the controlled substance, Hydrocodone
19 Bitartrate and Acetaminophen, without a prescription, as set forth in paragraph 16, above.

20 b. Respondent violated Health and Safety Code section 11173, in that November 12,
21 2007, Respondent took the controlled substance, Hydrocodone Bitartrate and Acetaminophen,
22 from her place of employment, without her employer's consent, as set forth in paragraph 16,
23 above.

24 **PRAYER**

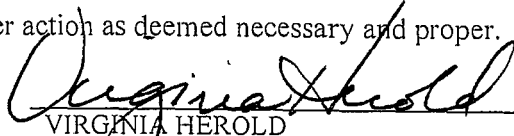
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board issue a decision:

27 1. Revoking or suspending Pharmacy Technician Registration No. 76085, issued to
28 Respondent;

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- 2. Ordering Respondent to pay the Board 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: 10/27/09



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

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