

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

In the Matter of the Accusation Against:

**CARRIE LYNN MARTIN
11104 Myers Ranch Court
Bakersfield, CA 93311
Pharmacy Technician License No. 18700**

Respondent.

Case No. 3516

OAH No. 2011080784

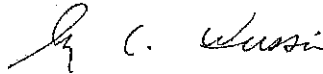
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on July 30, 2012.

It is so ORDERED on June 29, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

This matter came on regularly for hearing on February 28, 2012, at Bakersfield, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Complainant Virginia Herold was represented by Deputy Attorney General Christina M. Thomas. Respondent Carrie Lynn Martin was not present despite having been served with notice of the hearing.

Oral and documentary evidence was presented and the matter was submitted for decision on February 28, 2012.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. The Accusation was issued by Complainant Virginia Herold in her official capacity as Executive Officer of the Board of Pharmacy (Board). Respondent filed a request for a hearing.
2. Notice of the date, time and location of the hearing was served on Respondent at her address of record on file with the Board, which was the same address listed in her Notice of Defense. Proper jurisdiction was established over Respondent.
3. At the hearing, Complainant submitted documentary evidence and the testimony of Dr. De'Bora White, Pharm.D. In some instances there was insufficient evidence to establish allegations or portions of allegations in the Accusation.

4. On March 20, 1996, the Board issued Pharmacy Technician Registration Number TCH 18700 to Carrie Lynn Martin (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the facts found below and expired on September 30, 2011.

5. From October 1995 through January 1997, Respondent was employed as a pharmacy technician at the Payless Drug Store located at 110 East Cross Avenue, Tulare, California (Payless).

6. From January 1996 through January 1997, Respondent admittedly involved herself in a scheme with a woman identified as J.W. to obtain Vicodin, a controlled substance and dangerous drug, without valid prescriptions. At the request of J.W., Respondent entered a patient record for a fictitious patient, Randy Stevens, into the Payless pharmacy's computer database, the same as if an initiating original prescription had been submitted to the pharmacy from patient Randy Stevens.

7. When the Payless pharmacist receives an oral order for a prescription for a patient, the pharmacist accesses the patient database and, if the data for the patient is in the database, a new patient record is not created, the oral prescription order is added to the patient's record and the prescription is filled for patient pick-up. When a patient record is not in the pharmacy database, the oral prescription order is held for the patient to provide original prescription data to create a patient record.

8. After Respondent created the fictitious patient record, J. W. telephoned oral prescriptions to the Payless pharmacy for patient Randy Stevens and the prescriptions were filled without requiring original prescription data. J.W. or other persons would then pick-up, pay for, and take away the fraudulently filled prescriptions without providing original prescription records for the drugs received.

9. At some point Respondent monitored the records for Randy Stevens, noticed that the prescriptions were being filled without having proper breaks in time, and advised J.W. to allow more time between each filling of the prescriptions.

10. The following prescriptions for Vicodin 7.5/750 were filled for Randy Stevens:

<u>Prescription Date</u>	<u>Prescription Number</u>	<u>Quantity</u>
1/21/1996	4431793	60
1/29/1996	4432403	60
2/20/1996	4433073	60
3/5/1996	4433512	60
3/28/1996	4434967	60
5/9/1996	4435542	60

5/16/1996	4435542N	60
6/11/1996	4436632	60
6/11/1996	4436632N	60
6/20/1996	4438943	60
9/4/1996	4439777	100
10/8/1996	443732	100
1/25/1997	443732	100
		Total 900

11. On August 2, 1996 and November 7, 1996, Respondent falsely refilled, without valid prescription orders, Vicodin prescriptions for herself. Her Vicodin prescription had expired before these refills.

12. On October 4, 1996, October 18, 1996, and November 27, 1996, Respondent falsely refilled, without valid prescription orders, Vicodin prescriptions for her mother L.M. The Vicodin prescription had expired before these refills

13. On January 25, 1997, Respondent retrieved on behalf of her father C.M. a valid refill of a prescription for Prilosec 20 mg. from the Payless pharmacy and failed to pay for the prescription.

14. On February 5, 1997, Payless pharmacy filed a Department of Justice, Drug Enforcement Administration, Report of Theft of Loss of Controlled Substances for the period of January 1996 through January 1997, due to employee pilferage, specifically, prescriptions in the names of Randy Stevens, Respondent, and Respondent's parents, L.M. and C.M.

15. Complainant established that a pharmacy technician would be able to physically handle all controlled substances in a pharmacy under the general supervision of a pharmacist. Pharmacies are required to maintain accurate records. Pharmacists and pharmacy technicians should not furnish prescribed drugs for themselves or family members and should not fill a prescription that has expired.

16. Complainant incurred costs for the investigation and enforcement of this case in the amount of \$3,757.50, based upon 12.75 hours at \$170 per hour by the Deputy Attorney General and 13.25 hours at \$120 per hour by a paralegal. These costs are reasonable.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. In this proceeding based on an Accusation, the burden of proof is on Complainant to establish alleged violations by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Under Business and Professions Code section 118, the Board has authority to impose discipline against a license or registration that has expired or has been canceled.¹ Under section 4402, subdivision (e), if a registration is not renewed within 60 days of expiration, it may be canceled. The Board has jurisdiction over Respondent's expired registration.

3. Prescriptions are defined in section 4040. The prescriptions described in Factual Finding 10 (Randy Stevens), as augmented by the information from the fictitious patient record, appeared to be valid prescriptions containing the information required by statute. The prescriptions described in Factual Findings 11 and 12 (Respondent and her mother) had expired before Respondent caused them to be filled, and were therefore invalid. The prescription described in Factual Finding 13 (Respondent's father) was a valid prescription.

4. Section 4051, subdivision (a), states that "[e]xcept as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

5. Section 4059, subdivision (a), states that "[a] person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

6. Under section 4300, subdivision (a), the Board may suspend or revoke a license or registration.

7. Section 4301 states, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes:

"(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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts

¹ All statutory references are to the Business and Professions Code except where noted.

“(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

“(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”

8. Section 4324, subdivision (a), states:

“(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.”

9. Prilosec is categorized as a dangerous drug pursuant to section 4022.

10. Vicodin is a trade name for the narcotic substance hydrocodone or dihydrocodeinone with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and is a dangerous drug within the meaning of section 4022.

11. Cause exists to suspend or revoke Respondent’s registration as a pharmacy technician under sections 4301, subdivision (g), and 4324, subdivision (a), for knowingly creating false medical records for herself, her mother and a fictitious patient, as set forth in Factual Findings 6 through 12 and 14.

12. Cause does not exist to suspend or revoke Respondent’s registration as a pharmacy technician under sections 4300 and 4301, subdivision (i), for furnishing a controlled substance and dangerous drug to an addict. It was not established by clear and convincing evidence that J.W. was a drug addict.

13. Cause exists to suspend or revoke Respondent’s registration as a pharmacy technician under sections 4300 and 4301, subdivision (i), for violating sections 4051, subdivision (a), and 4059, subdivision (a), for furnishing dangerous drugs without valid prescriptions, as set forth in Factual Findings 6 through 12.

14. Cause exists to suspend or revoke Respondent’s registration as a pharmacy technician under sections 4300 and 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in Factual Findings 6 through 14.

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15. Under section 125.3, the Board may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$3,757.50, as set forth in Factual Finding 16

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Pharmacy Technician Registration Number TCH 18700 of Respondent Carrie Lynn Martin is revoked. Respondent shall relinquish her technician registration to the Board within ten days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of her revoked technician registration for three years from the effective date of this decision.

As a condition precedent to reinstatement of her revoked technician registration Respondent Carrie Lynn Martin shall reimburse the Board for its costs of investigation and enforcement in the amount of \$3,757.50, to be paid in full prior to the reapplication or reinstatement of her revoked technician registration, unless otherwise ordered by the Board.

DATED: March 21, 2012.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

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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. 3516

12 **CARRIE LYNN MARTIN**
11104 Myers Ranch Court
13 Bakersfield, CA 93311

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 18700

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, Department of Consumer Affairs (Board).

21 2. On or about March 20, 1996, the Board issued Pharmacy Technician Registration
22 Number TCH 18700 to Carrie Lynn Martin (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on September 30, 2011, 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 unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 4040, states:

7 “(a) "Prescription" means an oral, written, or electronic transmission order that is both of
8 the following:

9 (1) Given individually for the person or persons for whom ordered that includes all of the
10 following:

11 (A) The name or names and address of the patient or patients.

12 (B) The name and quantity of the drug or device prescribed and the directions for use.

13 (C) The date of issue.

14 (D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and
15 telephone number of the prescriber, his or her license classification, and his or her federal registry
16 number, if a controlled substance is prescribed.

17 (E) A legible, clear notice of the condition for which the drug is being prescribed, if
18 requested by the patient or patients.

19 (F) If in writing, signed by the prescriber issuing the order, or the certified nurse-
20 midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order
21 pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who
22 issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
23 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

24 (2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic
25 doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51,
26 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or
27 naturopathic doctor licensed in this state, or pursuant to either subparagraph (D) of paragraph (4)

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1 of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 by a
2 pharmacist licensed in this state.

3 (b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous
4 drug, except for any Schedule II controlled substance, that contains at least the name and
5 signature of the prescriber, the name and address of the patient in a manner consistent with
6 paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and
7 quantity of the drug prescribed, directions for use, and the date of issue may be treated as a
8 prescription by the dispensing pharmacist as long as any additional information required by
9 subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this
10 subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and
11 Safety Code shall prevail.

12 (c) "Electronic transmission prescription" includes both image and data
13 prescriptions. "Electronic image transmission prescription" means any prescription order for
14 which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic
15 data transmission prescription" means any prescription order, other than an electronic image
16 transmission prescription, that is electronically transmitted from a licensed prescriber to a
17 pharmacy.

18 (d) The use of commonly used abbreviations shall not invalidate an otherwise valid
19 prescription.

20 (e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969
21 Regular Session of the Legislature shall be construed as expanding or limiting the right that a
22 chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

23 6. Section 4051, subdivision (a), states that "[e]xcept as otherwise provided in this
24 chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any
25 dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to
26 Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

27 7. Section 4059, subdivision (a), states that "[a] person may not furnish any dangerous
28 drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or

1 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,
2 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
3 naturopathic doctor pursuant to Section 3640.7.”

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

6 9. Section 4301 states, in pertinent part:

7 “The board shall take action against any holder of a license who is guilty of unprofessional
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

9 Unprofessional conduct shall include, but is not limited to, any of the following:

10

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

14 “(g) Knowingly making or signing any certificate or other document that falsely
15 represents the existence or nonexistence of a state of facts.

16

17 “(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
18 administering or offering to sell, furnish, give away, or administer any controlled substance to an
19 addict.

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

22 10. Section 4324, subdivision (a), states:

23 “(a) Every person who signs the name of another, or of a fictitious person, or falsely
24 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription
25 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
26 in the state prison, or by imprisonment in the county jail for not more than one year.”

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1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

10 12. Section 125.3 provides that the Board may request the administrative law judge to
11 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
12 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

13 **CONTROLLED SUBSTANCE / DANGEROUS DRUGS**

14 13. Prilosec is categorized as a dangerous drug pursuant to section 4022.

15 14. Vicodin is a trade name for the narcotic substance hydrocodone or dihydrocodeinone
16 with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a
17 Schedule III controlled substance pursuant to Health and Safety Code section 11056(e), and is a
18 dangerous drug within the meaning of section 4022.

19 **PAYLESS DRUG STORE**

20 15. In or about October 1995, through in or about January 1997, Respondent was an
21 employee of Payless Drug Store, 110 East Cross Avenue, Tulare, California (Payless).

22 16. In or about January 1996, through in or about January 1997, admittedly, Respondent
23 involved herself in scheme for an addict, D.W., to obtain prescriptions for Vicodin, a controlled
24 substance and dangerous drug, without valid prescriptions for a fictitious patient, "Randy
25 Stevens." Respondent initiated the fraud by entering a fictitious patient record¹ for Randy

26 ¹ When the Payless pharmacist receives an oral prescription order for a patient, they
27 access the patient database, and if the data for the patient is in the database, a new patient record
28 is not created, the oral prescription order is added to the patient's record and the prescription is
filled for patient pick-up. When a patient record is not in the pharmacy database, the oral

(continued...)

1 Stevens into the Payless pharmacy's computer database, the same as if at one time an initiating
2 original prescription had been submitted to the pharmacy from patient Randy Stevens.

3 17. D. W. telephoned oral prescriptions into the Payless pharmacy for patient Randy
4 Stevens, the pharmacist would then fill the prescriptions without requiring original prescription
5 data. D.W. would then pick-up, pay for and take away the fraudulently filled prescriptions
6 without providing original prescription records for the received drugs.

7 18. Respondent continued to monitor D.W.'s activities in prescription furnishings for the
8 fictitious Randy Stevens. When Respondent noticed that Randy Steven's Vicodin prescriptions
9 were being filled without having proper breaks in time, she spoke with D.W. advising her to
10 allow more time between each prescription furnishing.

11 19. The approximate prescription activity for Randy Stevens is as follows:

Date	Prescription No.	Drug	Count
1/21/1996	4431793	Vicodin 7.5/750	60
1/29/1996	4432403	Vicodin 7.5/750	60
2/20/1996	4433073	Vicodin 7.5/750	60
3/5/1996	4433512	Vicodin 7.5/750	60
3/28/1996	4434967	Vicodin 7.5/750	60
5/9/1996	4435542	Vicodin 7.5/750	60
5/16/1996	4435542N	Vicodin 7.5/750	60
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6/11/1996	4436632N	Vicodin 7.5/750	60
6/20/1996	4438943	Vicodin 7.5/750	60
9/4/1996	4439777	Vicodin 7.5/750	100
10/8/1996	443732	Vicodin 7.5/750	100
1/25/1997	443732	Vicodin 7.5/750	100
Total			900

22
23 20. On or about August 2, 1996 and November 7, 1996, admittedly, Respondent falsely
24 refilled, without valid prescription orders, Vicodin prescriptions for herself.

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27 prescription order is held for the patient to provide original prescription data to create a patient
28 record.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Furnishing)

3 26. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (j), for violating sections 4051, subdivision (a), and 4059, subdivision (a), in that in
5 and between January 1996 through in or about January 1997, Respondent furnished dangerous
6 drugs without valid prescriptions. Complainant refers to and by this reference incorporates the
7 allegations set forth above in paragraphs 15 - 25, inclusive, as though set forth fully.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Dishonest Acts)

10 27. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (f), in that in and between January 1996 through in or about January 1997,
12 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.
13 Complainant refers to and by this reference incorporates the allegations set forth above in
14 paragraphs 15 - 25, inclusive, as though set forth fully.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18700,
19 issued to Respondent;
- 20 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
21 enforcement of this case, pursuant to section 125.3; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 8/9/10

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

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