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

10 In the Matter of the Accusation Against:

Case No. 3614

11 **MIRANDA VANESSA DEVOE**
12 **43301 Isle Royal**
13 **Fremont, CA 94538**

DEFAULT DECISION AND ORDER

14 **Pharmacy Technician License No. TCH 33767**

[Gov. Code, §11520]

15 Respondent.

16 FINDINGS OF FACT

17 1. On or about November 5, 2010, Complainant Virginia Herold, in her official capacity
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 3614 against Miranda Vanessa Devoe (Respondent) before the Board of
20 Pharmacy (Board). A true and correct copy of the Accusation is attached as exhibit A.

21 2. On or about July 5, 2000, the Board issued Pharmacy Technician License No. TCH
22 33767 to Respondent. The License was in full force and effect at all times relevant to the charges
23 brought herein and will expire on August 31, 2011, unless renewed.

24 3. On or about November 10, 2010, Respondent was served by Certified and First Class
25 Mail with copies of: Accusation No. 3614; a Statement to Respondent; a Notice of Defense (2
26 copies); a Request for Discovery; and the Discovery Statutes (Gov. Code, §§ 11507.5-11507.7) at
27 Respondent's address of record, which was and is: 43301 Isle Royal, Fremont, CA 94538.

28 Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of
Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are
required to be reported and maintained with the Board of Pharmacy (Board).

1 4. Service of the Accusation was effective as a matter of law under Government Code
2 section 11505, subdivision (c) and/or Business and Professions Code section 124.

3 5. Moreover, on or about November 15, 2010, the Domestic Return Receipt (green card)
4 from the Certified Mail mailing of the Accusation materials was returned by the U.S. Postal
5 Service, with a signature and date of November 13, 2010, showing the apparent receipt of the
6 Accusation and statutory notices at Respondent's address of record on that date.

7 6. Government Code section 11506 states, in pertinent part:

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

13 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
14 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3614.

15 8. California Government Code section 11520 states, in pertinent part:

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

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 3614, finds that
25 the charges and allegations in Accusation No. 3614, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

27 10. Taking official notice of its own internal records, pursuant to Business and
28 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$5,582.50 as of February 17, 2011.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Miranda Vanessa Devoe has
3 subjected her Pharmacy Technician License No. TCH 33767 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 License based upon the following violations alleged in the Accusation which are supported by the
7 evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

8 a. In violation of Business and Professions Code section 4301(f), Respondent did acts
9 involving moral turpitude, dishonesty, fraud, deceit, or corruption, including that in and between
10 at least January 2008 and November 2008, Respondent diverted/stole controlled substances from
11 her employer (one or more Longs Drugs store pharmacies), including **Hydrocodone**-containing
12 and **Phentermine**-containing products, at least 200 and as many as 1,054 tablets of **Hydrocodone**
13 products, and at least 5 and as many as 1,226 tablets of **Phentermine** products. Respondent also
14 self-administered at least the **Hydrocodone** products while on duty as a pharmacy technician.

15 b. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4059,
16 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
17 herself or another without valid prescription, and/or conspired to furnish, and/or assisted or
18 abetted furnishing of, controlled substance(s).

19 c. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4060,
20 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,
21 conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a
22 valid prescription.

23 d. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4327,
24 Respondent, as described above, while on duty in a pharmacy, sold, dispensed, or compounded
25 drug(s) while under the influence of one or more dangerous drug(s), conspired to do so, and/or
26 assisted in or abetted such conduct.

27 e. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
28 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to

1 obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit,
2 subterfuge, or concealment of material fact.

3 f. In violation of Business and Professions Code section 4301, Respondent, as described
4 above, engaged in unprofessional conduct.

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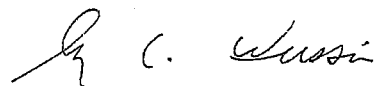
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 33767, heretofore issued to Respondent Miranda Vanessa Devoe, is revoked.

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

This Decision shall become effective on May 11, 2011.

It is so ORDERED April 11, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

20409085.DOC
DOJ Matter ID:SF2010200595

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

10 In the Matter of the Accusation Against:

Case No. 3614

11 **MIRANDA VANESSA DEVOE**
12 **43301 Isle Royal**
13 **Fremont, CA 94538**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 33767**

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.
- 21 2. On or about July 5, 2000, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 33767 to Miranda Vanessa Devoe (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on August 31, 2011, unless renewed.

25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise 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(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and will require a new application.

14 STATUTORY AND REGULATORY PROVISIONS

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

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

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

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
24 of a licensee under this chapter.

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

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

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

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

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

12 11. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,
13 dispense or compound any drug while under the influence of any dangerous drug or alcohol.

14 12. Health and Safety Code section 11170 provides that no person shall prescribe,
15 administer, or furnish a controlled substance for himself or herself.

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

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

23 COST RECOVERY

24 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation of the licensing
26 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 16. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
9 prescription,’ ‘Rx only,’ or words of similar import.

10 ...

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

13 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
14 compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III
15 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
16 drug as designated by Business and Professions Code section 4022. The varying compounds are
17 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

18 19. **Adipex** and **Fastin** are among the brand names for **Phentermine**, a Schedule IV
19 controlled substance as designated by Health and Safety Code section 11057(f)(4) and dangerous
20 drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

21 FACTUAL BACKGROUND

22 20. Between in or about December 2007 and in or about November 2008, Respondent
23 worked as a pharmacy technician at a Longs Drugs (#467; PHY 44745) in Fremont, CA, where
24 by virtue of her employment she had access to controlled substances and dangerous drugs.

25 21. During the tenure of her employment by Longs Drugs, Respondent used her access to
26 divert/steal, and self-administer, controlled substances/dangerous drugs, including **Hydrocodone**
27 **with APAP-** and **Phentermine-**containing controlled substance/dangerous drug products.

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1 22. The exact number of instances of diversion/theft by Respondent, and the full quantity
2 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
3 the course of investigations conducted by the pharmacy, by police, and by Board Inspector(s), the
4 following were among the observations, admissions, and revelations reported:

5 a. The Pharmacist in Charge (PIC) at the Longs Drugs in Fremont, CA by which
6 Respondent was employed began to notice discrepancies (shortages) of **Hydrocodone**-containing
7 products in or about September 2008. In or about October 2008, the PIC began hand-counting of
8 selected controlled substances every morning, and between on or about October 14, 2008 and on
9 or about November 13, 2008, identified shortages of **Hydrocodone** and **Pentermine** products.
10 At least once, a shortage occurred while Respondent was left alone in the pharmacy during lunch.

11 b. Covert cameras were installed in the pharmacy. On two occasions, on or about
12 November 7, 2008, and on or about November 12, 2008, the cameras captured Respondent taking
13 and/or self-administering what appeared to be tablets of **Hydrocodone**-containing products.

14 c. During interviews with pharmacy investigators and with police, Respondent
15 admitted to stealing various strengths of **Hydrocodone**-containing products, and also to theft of
16 **Pentermine**-containing products. Respondent admitted that she had been stealing these drugs
17 since at least January 2008, during her employment at the Longs store in Fremont and also during
18 her employment at another Longs Drugs (#53; PHY 15559) in Hayward, CA. She said that she
19 would consume the **Hydrocodone** products while on duty, typically taking about five (5) tablets a
20 day. She said that she did not take the pills every day, but admitted to taking and consuming at
21 least one hundred (100) tablets from each Longs Drugs at which she worked (total of 200). She
22 also admitted to taking and consuming at least five (5) tablets of **Pentermine** products.

23 d. Subsequent audit(s) of the controlled substances stock of Longs Drugs #467 in
24 Fremont, CA revealed shortages of approximately 1,054 tablets of various strengths and varieties
25 of **Hydrocodone**-containing products for the period May 2007 through November 2008, and an
26 additional shortage of approximately 1,226 tablets of **Pentermine** during the same period.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 23. Respondent is subject to discipline under section 4301(f) of the Code, in that
4 Respondent, as described in paragraphs 20 to 22 above, committed numerous acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance(s))

9 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
11 in paragraphs 20 to 22 above, furnished to herself or another without a valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13
14 THIRD CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance(s))

16 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
18 in paragraphs 20 to 22 above, possessed, conspired to possess, and/or assisted in or abetted
19 possession of, a controlled substance, without a prescription.

20
21 FOURTH CAUSE FOR DISCIPLINE

22 (Under Influence While on Duty in a Pharmacy)

23 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4327 of the Code, in that Respondent, as described in paragraphs 20 to 22 above, while on duty in
25 a pharmacy, sold, dispensed or compounded drug(s) while under the influence of one or more
26 dangerous drug(s), conspired to do so, and/or assisted in or abetted such conduct.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 20 to 22 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7
8 SIXTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

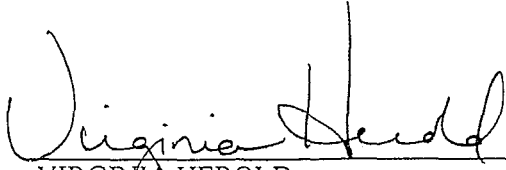
10 28. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 20 to 27 above, engaged in unprofessional conduct.

12
13 PRAYER

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

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH 33767, issued
17 to Miranda Vanessa Devoe (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21
22 DATED: 11/5/10

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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