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

In the Matter of the Accusation Against:
NICOLE MARIE PRATT
14713 Fisk Court
San Leandro, CA 94579
Pharmacy Technician License No. TCH 80222

Respondent.

Case No. 4108
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 29, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4108 against Nicole Marie Pratt (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)

2. On or about December 20, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 80222 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4108 and will expire on July 31, 2013, unless renewed.

3. On or about June 11, 2012, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4110; a Statement to Respondent, a Notice of Defense; a Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: 14713 Fisk Court, San Leandro, CA 94579.

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

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

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

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

10 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4108.

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

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

16 9. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
19 taking official notice of all the investigatory reports, exhibits and statements contained therein on
20 file at the Board's offices regarding the allegations contained in Accusation No. 4108, finds that
21 the charges and allegations in Accusation No. 4108 are, separately and severally, found to be true
22 and correct by clear and convincing evidence.

23 10. Taking official notice of its own internal records, pursuant to Business and
24 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
25 and Enforcement is \$3,992.50 as of September 21, 2012.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Nicole Marie Pratt has subjected
28 her Pharmacy Technician License No. TCH 80222 to discipline.

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

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

5 a. Respondent's License is subject to revocation pursuant to Business and Professions
6 Code section 4301(f) for acts involving moral turpitude, dishonesty, fraud, deceit or corruption, in
7 that for an unknown time period and on an unknown number of occasions prior to January 3,
8 2011, Respondent diverted/stole controlled substances and dangerous drugs, including **Vicodin** or
9 other **Hydrocodone with APAP**-containing drugs.

10 b. Respondent's License is subject to revocation pursuant to Business and Professions
11 Code section 4301(h), for self-administration of a controlled substance, in that Respondent did
12 use/self-administer at least some of the controlled substances diverted, as described above.

13 c. Respondent's License is subject to revocation pursuant to Business and Professions
14 Code section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code
15 section 11170, in that Respondent, as described above, furnished to herself or another, and/or
16 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance and/or a
17 dangerous drug, without a prescription.

18 d. Respondent's License is subject to revocation pursuant to Business and Professions
19 Code section 4301(j) and/or (o) and/or section 4060, and/or Health and Safety Code section(s)
20 11350 and/or 11377, in that Respondent, as described above, possessed, conspired to possess,
21 and/or assisted in or abetted possession of, controlled substance(s), without a prescription.

22 e. Respondent's License is subject to revocation pursuant to Business and Professions
23 Code section 4301(j) and/or (o), and/or Health and Safety Code section 11173(a), in that
24 Respondent, as described above, obtained, conspired to obtain, and/or assisted in or abetted the
25 obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

26 f. Respondent's License is subject to revocation pursuant to Business and Professions
27 Code section 4301, in that Respondent, as described above, engaged in unprofessional conduct.

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ORDER

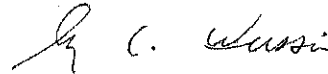
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 80222, heretofore issued to Respondent Nicole Marie Pratt, is revoked.

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 November 26, 2012.

It is so ORDERED ON October 25, 2012

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

40594127.DOC
DOJ Matter ID:SF2011202875

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 4108

11 **NICOLE MARIE PRATT**
12 **14713 Fisk Court**
13 **San Leandro, CA 94579**

ACCUSATION

14 **Pharmacy Technician License No. TCH 80222**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about December 20, 2007, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 80222 to Nicole Marie Pratt (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on July 31, 2013, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

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

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

28 ///

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

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

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

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

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

18 COST RECOVERY

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

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 14. Section 4021 of the Code states:

24 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code.”

26 15. Section 4022 of the Code states, in pertinent part:

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

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

3

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

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

11 FACTUAL BACKGROUND

12 17. From an unknown start date until on or about January 3, 2011, Respondent was
13 employed by Kaiser Permanente as a pharmacy technician at a Kaiser Foundation Hospital
14 Inpatient Pharmacy (HSP 41396) in Fremont, CA, where by virtue of her licensure she had access
15 to controlled substances and dangerous drugs.

16 18. During her Kaiser employment, Respondent used this access to divert/steal, and self-
17 administer, controlled substances/dangerous drugs, including **Vicodin** or its generic equivalent,
18 **Hydrocodone with APAP 5/500**.

19 19. The exact number of instances of diversion/theft by Respondent, and the full quantity
20 of controlled substances or dangerous drugs diverted/stolen, and/or self-used are not known, but
21 investigations by Kaiser and by Board Inspector(s) revealed/reported the following:

22 a. Between in or about September and in or about November 2010, management
23 at the pharmacy began noticing missing bottles of thirty (30) count **Vicodin (or Hydrocodone**
24 **with APAP 5/500)**. On or about December 8, 2010, the pharmacy filed a Report of Theft or Loss
25 of Controlled Substances (DEA-106) identifying a shortage attributed to employee pilferage of
26 five (5) bottles, thirty (30) tablets each, of **Vicodin (or Hydrocodone with APAP 5/500)**. The
27 pharmacy management staff noted that Respondent was working during all shifts when shortages
28 were noted. A surveillance camera was installed on or about December 9, 2010.

1 b. Between on or about December 16, 2010 and on or about December 17, 2010, a
2 perpetual inventory count discovered an additional bottle (30 tablets) of **Vicodin** missing.

3 c. On or about December 17, 2010, Respondent was captured on video accessing
4 the Narcotics Room, which she had no reason to enter, and diverting a bottle of **Vicodin**.

5 d. On or about December 20, 2010, during an interview with Kaiser management
6 and investigators, Respondent initially denied any diversion of controlled substances or access to
7 the Narcotics Room. After being shown the video of her doing so, Respondent admitted to taking
8 a bottle of **Vicodin** on or about December 17, 2010, and further admitted to taking other bottles of
9 **Vicodin** on four (4) or five (5) prior occasions, beginning in September 2010. Respondent further
10 admitted to taking the **Vicodin** for self-use. She denied suffering from an addiction.

11 e. On or about January 3, 2011, Respondent resigned in lieu of termination.
12

13 FIRST CAUSE FOR DISCIPLINE

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

15 20. Respondent is subject to discipline under section 4301(f) of the Code, in that
16 Respondent, as described in paragraphs 17 to 19 above, committed acts involving moral
17 turpitude, dishonesty, fraud, deceit, or corruption.

18 SECOND CAUSE FOR DISCIPLINE

19 (Self-Administration of Controlled Substance(s))

20 21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
21 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
22 described in paragraphs 17 to 19 above, administered a controlled substance to herself.

23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 17 to 19 above, furnished to herself or another without a valid prescription, and/or
28 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

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FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

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

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

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

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.

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 License Number TCH 80222, issued to Nicole Marie Pratt (Respondent);
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;

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3. Taking such other and further action as is deemed necessary and proper.

DATED: 5/29/12

Virginia Herold

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

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