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

12 In the Matter of the Accusation Against:

Case No. ~~3262~~ 3256

13 RAMON BARRIOS GURROLA
345 Ventura Street
Fillmore, CA 93015
14 Pharmacy Technician License No. TCH 63846
15 Respondent.

ACCUSATION

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 23, 2005, the Board of Pharmacy (Board) issued
22 Pharmacy Technician License Number TCH 63846 to Ramon Barrios Gurrola (Respondent).
23 The Pharmacy Technician License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on August 31, 2009, unless renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

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

6 5. Section 4059, subdivision (a), states:

7 "A person may not furnish any dangerous drug except upon the prescription of a
8 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
9 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
10 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
11 3640.7."

12 6. Section 4060 states:

13 "No person shall possess any controlled substance, except that furnished to a
14 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
15 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a
16 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
17 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to
18 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
19 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
20 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer. . . ."

24 7. Section 4301 states:

25 "The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct or whose license has been procured by fraud or misrepresentation or

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1 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
2 following:

3
4 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
5 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
6 otherwise, and whether the act is a felony or misdemeanor or not.

7
8 "(l) The conviction of a crime substantially related to the qualifications,
9 functions, and duties of a licensee under this chapter. The record of conviction of a violation of
10 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating
11 controlled substances or of a violation of the statutes of this state regulating controlled substances
12 or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases,
13 the record of conviction shall be conclusive evidence only of the fact that the conviction
14 occurred. The board may inquire into the circumstances surrounding the commission of the
15 crime, in order to fix the degree of discipline or, in the case of a conviction not involving
16 controlled substances or dangerous drugs, to determine if the conviction is of an offense
17 substantially related to the qualifications, functions, and duties of a licensee under this chapter.
18 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
19 conviction within the meaning of this provision. The board may take action when the time for
20 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
21 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
22 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
24 accusation, information, or indictment.

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

1 established by the board or by any other state or federal regulatory agency.”

2 8. Health and Safety Code section 11173, subdivision (a)(1), provides that no
3 person shall obtain or attempt to obtain controlled substances by fraud, deceit, misrepresentation,
4 or subterfuge.

5 REGULATORY PROVISIONS

6 9. California Code of Regulations, Title 16, section 1770, states:

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

13 COST RECOVERY

14 10. Section 123.5 of the Code states, in pertinent part, that the Board may
15 request the administrative law judge to direct a licentiate found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 CONTROLLED SUBSTANCES - DANGEROUS DRUGS

19 11. Norco is a brand name for the combination narcotic, Hydrocodone and
20 Acetaminophen. Hydrocodone is a Schedule III controlled narcotic substance pursuant to Health
21 and Safety Code section 11056(e)(4), and a dangerous drug pursuant to Business and Professions
22 Code section 4022.

23 12. Vicodin is a brand name for the combination narcotic, Hydrocodone and
24 Acetaminophen. It is a Schedule III controlled substance as defined in Health and Safety Code
25 section 11056(e), and is a dangerous drug pursuant to Business and Professions Code section
26 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially-Related Crimes)**

3 13. Respondent is subject to disciplinary action under section 4301;
4 subdivision (1), in conjunction with California Code of Regulations, Title 16, section 1770, in
5 that Respondent was convicted of crimes substantially related to the qualifications, functions or
6 duties of a licensed pharmacy technician, as follows:

7 a. On or about November 21, 2007, after pleading guilty, Respondent
8 was convicted of one felony count of violating Health and Safety Code section 11351 [possession
9 for sale of a controlled substance], in the criminal proceeding entitled *The People of The State of*
10 *California v. Ramon Barrios Gurrola* (Super. Ct. Ventura County, 2007, No. 2007030468).
11 Respondent was sentenced to 180 days in jail, ordered to register as a narcotics offender and
12 placed on 3 years probation. The circumstances surrounding the conviction are that on or about
13 August 9, 2007, Respondent stole 144 bottles of Hydrocodone 750mg consisting of 100 tabs per
14 bottle from December 2006 through August 07 including 325mg tabs in August 2007 while
15 employed with Care Pharmacy. Respondent admitted the theft.

16 b. On or about November 1, 1996, after pleading guilty, Respondent
17 was convicted of one misdemeanor count of violating Vehicle Code section 23152,
18 subdivision (b) [driving with blood-alcohol content greater than 0.08%], in the criminal
19 proceeding entitled, *The People of The State of California v. Ramon Barrios Gurrola* (Super. Ct.
20 Ventura County, 1996, No. 96S003455). Respondent was sentenced to 5 days in jail, ordered to
21 pay a court fine of \$1806.00 and placed on 3 years probation.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Dishonest Acts)**

24 14. Respondent is subject to disciplinary action under section 4301,
25 subdivision (f), on the grounds of unprofessional conduct in that on or about August 9, 2007,
26 while employed as a pharmacy technician in Ventura, California committed dishonest acts
27 by stealing medications from his place of employment. Complainant refers to, and by this

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1 reference incorporates, the allegations set forth above in paragraph 13, subparagraph (a), as
2 though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Furnishing Drugs Without a Prescription)**

5 15. Respondent is subject to disciplinary action under section 4301,
6 subdivision (o), in that he violated section 4059, subdivision (a) and section 4060, when,
7 between December 2006 and August 2007 he furnished 144 bottles of Hydrocodone 750 mg
8 containing 100 tabs each bottle and 325 mg tabs in August 2007 to himself without a
9 prescription. Complainant refers to, and by this reference incorporates, the allegations set forth
10 above in paragraph 13, subparagraph (a), as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Obtaining Controlled Substances by Deceit or Subterfuge)**

13 16. Respondent is subject to disciplinary action under section 4301,
14 subdivision (o), in that he violated Health and Safety Code section 11173, subdivision (a)(1), by
15 obtaining controlled substances by deceit and/or subterfuge. Complainant refers to and by this
16 reference incorporates, the allegations set forth above in paragraph 13, subparagraph (a), as
17 though set forth fully.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician License Number TCH
22 63846, issued to Respondent;

23 2. Ordering Respondent to pay the Board the reasonable costs of the

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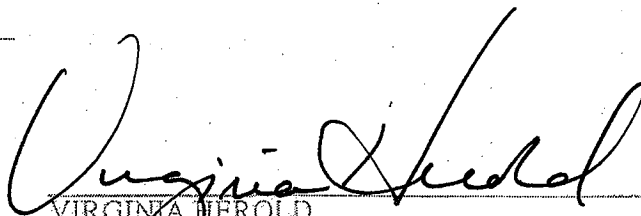
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1 investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3; and

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

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5 DATED: 9/14/09



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

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