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

11 In the Matter of the Accusation Against:

Case No. 3267

12 **CLAUDIA R. RAFAEL**  
1174 S. Crenshaw Blvd.  
13 Los Angeles, CA 90019

**A C C U S A T I O N**

14 Pharmacy Technician Registration No.  
15 TCH46934

16 Respondent.

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 March 12, 2003, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 46934 to Claudia R. Rafael (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on September 30, 2010, 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

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

5       5.     Section 490 states, in pertinent part:

6             “(a) In addition to any other action that a board is permitted to take against a  
7 licensee, a board may suspend or revoke a license on the ground that the licensee has been  
8 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
9 of the business or profession for which the license was issued.

10            “(b) Notwithstanding any other provision of law, a board may exercise any authority  
11 to discipline a licensee for conviction of a crime that is independent of the authority granted under  
12 subdivision(a) only if the crime is substantially related to the qualifications, functions, or duties of  
13 the business or profession for which the licensee's license was issued.

14            “(c) A conviction within the meaning of this section means a plea or verdict of  
15 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to  
16 take following the establishment of a conviction may be taken when the time for appeal has  
17 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting  
18 probation is made suspending the imposition of sentence, irrespective of a subsequent order under  
19 the provisions of Section 1203.4 of the Penal Code.”

20       6.     Section 4059, subdivision (a) states, in pertinent part:

21             “A person may not furnish any dangerous drug, except upon the prescription of a physician,  
22 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
23 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to  
25 Section 3640.7.”

26       7.     Section 4300 provides, in pertinent part, that every license issued by the Board is  
27 subject to discipline, including suspension or revocation.

28     ///

1           8.     Section 4301 states:

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

5           .....

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

9           .....

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

12          .....

13          "(l) The conviction of a crime substantially related to the qualifications, functions, and  
14     duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
15     (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
16     substances or of a violation of the statutes of this state regulating controlled substances or  
17     dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
18     record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
19     The board may inquire into the circumstances surrounding the commission of the crime, in order  
20     to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
21     or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
22     qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
23     a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
24     of this provision. The board may take action when the time for appeal has elapsed, or the  
25     judgment of conviction has been affirmed on appeal or when an order granting probation is made  
26     suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
27     the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
28

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
2 indictment.”

### 3 REGULATORY PROVISIONS

4 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

### 11 COST RECOVERY

12 10. Section 125.3 states, in pertinent part, that the Board may request the administrative  
13 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
14 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
15 case.

### 16 DANGEROUS DRUG

17 11. "Viagra," is the brand name for sildenafil citrate and is categorized as a dangerous  
18 drug pursuant to section 4022.

### 19 FIRST CAUSE FOR DISCIPLINE

#### 20 (Conviction of a Substantially Related Crime)

21 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l)  
22 and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that on  
23 January 10, 2007, Respondent was convicted for a crime substantially related to the  
24 qualifications, functions or duties of a pharmacy technician as follows:

#### 25 GRAND THEFT (2007)

26 a. On or about January 10, 2007, after pleading nolo contendere, Respondent was  
27 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand  
28 theft: property over \$400] in the criminal proceeding entitled *People of the State of California v.*

1 *Claudia R. Rafael* (Super. Ct. Los Angeles County, 2007, No. 6CA26300). The Court sentenced  
2 Respondent to 5 days in Los Angeles County Jail and placed Respondent on probation for 12  
3 months, with terms and conditions.

4 b. The circumstances surrounding the conviction are that at the time of the  
5 misconduct for which she was convicted, Respondent had been employed as a pharmacy  
6 technician at Walgreens Drug Store ("Walgreen"), in Los Angeles for approximately three years.  
7 On December 8, 2006, Walgreen security personnel reviewing surveillance camera videos from  
8 the previous day, observed Respondent conceal a bottle of Viagra (100mg) while filling a  
9 prescription. When confronted by Walgreen personnel, Respondent admitted stealing the bottle of  
10 Viagra she is seen concealing in the video. Respondent subsequently admitted stealing at least 11  
11 bottles of Viagra (ten '100 mg' bottles and one '50 mg' bottle) from Walgreen between  
12 approximately June and December 2006, which she furnished to her mother to sell to a third party  
13 for a reported price of \$180.00 per bottle.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Furnishing Dangerous Drugs Without a Prescription)**

16 13. Respondent is subject to disciplinary action under section 4301, subdivision (j),  
17 as defined in section 4059, in that on or about December 8, 2006, Respondent, by her own  
18 admission, stole a bottle of Viagra 100 mg from her employer on December 7, 2006, and stole at  
19 least 11 bottles of Viagra from her employer between approximately June and December 2006,  
20 which she furnished to her mother to sell to a third party for a reported price of \$180.00 per  
21 bottle, as described more fully in paragraph 12 (a) above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dishonest Acts)**

24 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
25 that Respondent committed dishonest acts by stealing dangerous drugs from her employer and  
26 furnishing them to her mother without a prescription, for financial profit. Complainant refers to,  
27 and by this reference incorporates, the allegations set forth above in paragraphs 12 and 13,  
28 inclusive, as though fully set forth.

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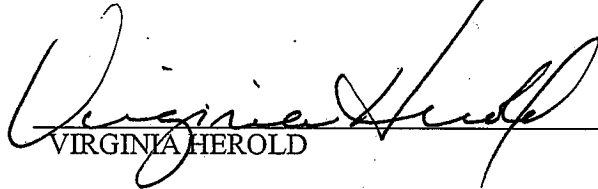
**PRAYER**

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 Registration No. TCH 46934, issued to Respondent.
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

9/17/09

  
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VIRGINIA HEROLD

Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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