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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. 3277

12 **REINA CHAVEZ**
5635 Kevinberg Drive
13 Sacramento, CA 95823
14 Pharmacy Technician Registration
No. TCH 65722

A C C U S A T I O N

15 Respondent.

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 (Board), Department of Consumer
21 Affairs.

22 2. On or about October 26, 2005, the Board issued Pharmacy Technician
23 Registration No. TCH 65722 to Reina Chavez (Respondent). The Pharmacy Technician
24 Registration will expire on January 31, 2011, 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.

1 4. Business and Professions Code section 118, subdivision (b) provides that
2 the suspension, expiration, or forfeiture by operation of law of a license does not deprive the
3 Board of authority or jurisdiction to institute or continue with disciplinary action against the
4 license or to order suspension or revocation of the license, during the period within which the
5 certificate may be renewed, restored, reissued or reinstated.

6 5. Section 490 states, in pertinent part:

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

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

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

21 6. Section 4059 states, in pertinent part:

22 "(a) A person may not furnish any dangerous drug, except upon the prescription of
23 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
24 Section 3640.7."

25 7. Section 4060 states, in pertinent part:

26 "No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
28 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a

1 certified nurse midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
2 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to
3 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
4 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.”

5 8. Section 4300 of the Code provides, in pertinent part, that every license
6 issued by the Board is subject to discipline, including suspension or revocation.

7 9. Section 4301 of the Code states:

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

12

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

16

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

19

20 (l) The conviction of a crime substantially related to the qualifications, functions,
21 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
2 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
3 meaning of this provision. The board may take action when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section
6 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
7 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
8 or indictment.”

9
10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
12 applicable federal and state laws and regulations governing pharmacy, including regulations
13 established by the board or by any other state or federal regulatory agency.”

14 10. Health and Safety Code section 11173, subdivision (a) states:

15 “No person shall obtain or attempt to obtain controlled substances, or procure or
16 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
17 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

18 11. Health and Safety Code section 11350, subdivision (a) states:

19 “Except as otherwise provided in this division, every person who possesses (1)
20 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
21 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
22 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
23 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
24 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
25 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

26 12. Health and Safety Code section 11351 states:

27 “Except as otherwise provided in this division, every person who possesses for
28 sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b),

1 (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of
2 Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision
3 (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is
4 a narcotic drug, shall be punished by imprisonment in the state prison for two, three, or four
5 years.”

6 13. Health and Safety Code section 11352 states:

7 “(a) Except as otherwise provided in this division, every person who transports,
8 imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import
9 into this state, sell, furnish, administer, or give away, or attempts to import into this state or
10 transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of
11 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of
12 Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision
13 (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is
14 a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
15 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
16 prison for three, four, or five years.

17 (b) Notwithstanding the penalty provisions of subdivision (a), any person who
18 transports for sale any controlled substances specified in subdivision (a) within this state from
19 one county to another noncontiguous county shall be punished by imprisonment in the state
20 prison for three, six, or nine years.”

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

25 15. Penal Code section 487 states:

26 “Grand theft is theft committed in any of the following cases: (a) When the
27 money, labor, or real or personal property taken is of a value exceeding four hundred dollars
28 (\$400), except as provided in subdivision (b). “

1 16. California Code of Regulations, title 16, section 1770, states, in pertinent
2 part: "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 his license or registration in a
7 manner consistent with the public health, safety, or welfare."

8 17. CONTROLLED SUBSTANCES

9 A. "Vicodin ES" is a Schedule III controlled substance as defined by Health
10 and Safety Code section 11056(e)(4) and is categorized as a "dangerous drug" pursuant to section
11 4022 of the Business and Professions Code.

12 B. "Valium" is a Schedule IV controlled substance as defined by Health and
13 Safety Code section 11057(d)(9), and is categorized as a "dangerous drug" pursuant to section
14 4022 of the Business and Professions Code.

15 FIRST CAUSE FOR DISCIPLINE

16 *(Conviction of a Substantially Related Crime)*

17 18. Respondent is subject to disciplinary action under sections 4301,
18 subdivision (l), and 490 of the Code, in conjunction with California Code of Regulations, title
19 16, section 1770, in that, Respondent was convicted of a crime which is substantially related to
20 the qualifications, functions or duties of a pharmacy technician, as follows:

21 19. On or about June 19, 2008, Respondent was convicted following her plea
22 of nolo contendere to one count of violating Penal Code section 487(A) [grand theft], a
23 misdemeanor, in the criminal proceeding entitled *The People of the State of California v. Reina*
24 *Chavez* (Super. Ct. Los Angeles County, 2008, No. SA068043). Respondent was sentenced and
25 given credit for serving 1 day in Los Angeles County Jail, placed on 36 months summary
26 probation, and ordered to complete 30 days of community service, and to pay fines and
27 restitution. The circumstances surrounding the conviction are that on or about May 28, 2008,
28 Respondent stole 1000 tablets of generic Vicodin ES and 100 tablets of Valium (10mg) from her

1 employer, Emerson Pharmacy located at 8400 Lincoln Boulevard in Los Angeles, to sell and/or
2 furnish to a person in a parking
3 lot for \$500¹ cash.

4 **SECOND CAUSE FOR DISCIPLINE**

5 *(Unprofessional Conduct - Dishonesty)*

6 20. Respondent is subject to disciplinary action under Code section 4301,
7 subdivision (f), in that, Respondent committed dishonest acts by stealing controlled substances
8 and dangerous drugs from her employer as set forth in paragraphs 15 and 16 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 *(Obtaining Controlled Substances by Fraud or Deceit)*

11 21. Respondent is subject to disciplinary action under section 4300 and 4301,
12 subdivision (f) of the Code, on the grounds of unprofessional conduct, for violating Health and
13 Safety Code sections 11173, in that, Respondent obtained a controlled substances by fraud and
14 deceit, by stealing 1000 tablets of generic Vicodin and 100 tablets of Valium (10mg) from her
15 employer, Emerson Pharmacy, as set forth in paragraphs 15 and 16 above.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 *(Furnishing Dangerous Drugs/Controlled Substances Without a Prescription)*

18 22. Respondent is subject to disciplinary action under section 4300 and 4301,
19 subdivisions (j) and (o), of the Code, on the grounds of unprofessional conduct, for violating
20 sections 4059 and 4060 of the Code, in that, while working as a pharmacy technician,
21 Respondent stole controlled substances from her employer, Emerson Pharmacy, to sell to a
22 person in parking lot, as set forth in paragraphs 15 and 16 above.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number

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28 1. The actual retail value of the tablets was \$1050.

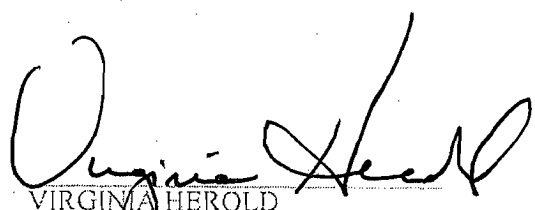
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TCH 65722 issued to Reina Chavez;

2. Ordering Reina Chavez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 12/30/09



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant