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

11 In the Matter of the Accusation Against:

Case No. 3332

12 **ELISAJOY ESPIRITU RAMOS**
13 **12329 Spyglass Terrace**
14 **Poway, CA 92064**

A C C U S A T I O N

15 **Pharmacy Technician Reg. No. TCH 83365**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 83365 to Elisajoy Espiritu Ramos (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2009, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) states "Every license issued may be suspended or
10 revoked."

11 **STATUTORY PROVISIONS**

12 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
13 revoke a license on the ground that the licensee has been convicted of a crime substantially
14 related to the qualifications, functions, or duties of the business or profession for which the
15 license was issued.

16 7. Section 4022 of the Code states

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
18 self-use in humans or animals, and includes the following:

19 (a) Any drug that bears the legend: "Caution: federal law prohibits
20 dispensing without prescription," "Rx only," or words of similar import.

21 (b) Any device that bears the statement: "Caution: federal law restricts this
22 device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

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

25 8. Section 4301 of the Code states:

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

1
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
3 deceit, or corruption, whether the act is committed in the course of relations as a
4 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

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
28 chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a

1 person upon the prescription of a physician, dentist, podiatrist, optometrist,
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
3 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
4 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
5 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
6 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
7 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
8 shall not apply to the possession of any controlled substance by a manufacturer,
9 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
10 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
11 physician assistant, when in stock in containers correctly labeled with the name and
12 address of the supplier or producer.

13
14 Nothing in this section authorizes a certified nurse-midwife, a nurse
15 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
16 stock of dangerous drugs and devices.

17
18 11. Section 11158(a) of the Health and Safety Code states:

19 Except as provided in Section 11159 or in subdivision (b) of this section, no
20 controlled substance classified in Schedule II shall be dispensed without a prescription
21 meeting the requirements of this chapter. Except as provided in Section 11159 or when
22 dispensed directly to an ultimate user by a practitioner, other than a pharmacist or
23 pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed
24 without a prescription meeting the requirements of this chapter.

25
26 12. Section 11173(a) of the Health and Safety Code states:

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

13. Section 11351 of the Health and Safety Code states:

Except as otherwise provided in this division, every person who possesses for sale or
purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c),
or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of
Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in
subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III,
IV, or V which is a narcotic drug, shall be punished by imprisonment in the state prison for
two, three, or four years.

14. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally --

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(3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

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REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1769 states:

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(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COST RECOVERY

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

DRUGS

18. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance as designated by California Health and Safety Code section 11057, subdivision (d)(1), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

1 19. Norco, a brand name for hydrocodone with acetaminophen (APAP), is a Schedule III
2 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4),
3 and is classified as a dangerous drug pursuant to section 4022.

4 20. Oxycodone, also sold under the brand name OxyContin, is a Schedule II controlled
5 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is
6 classified as a dangerous drug pursuant to Business and Professions Code section 4022.

7 21. Suboxone, the brand name for buprenorphine and naloxone, is a Schedule V
8 controlled substance pursuant to Health and Safety Code section 11058, subdivision (d), and is
9 classified as a dangerous drug pursuant to Business and Professions Code section 4022.

10 **FACTS**

11 22. On or about June 4, 2008, following an audit of controlled substances, Sav-On
12 Pharmacy (located inside a San Diego Albertson's grocery store), reported to the Drug
13 Enforcement Administration that approximately 800 tablets of oxycodone in various strengths
14 were missing from inventory. The information was reported to the Board on June 5, 2008.

15 23. As a result of the missing controlled substances, an Albertson's loss prevention
16 officer performed additional audits of missing inventory, conducted electronic surveillance of the
17 pharmacy, and interviewed employees. Respondent, who was employed as a Pharmacy Clerk,
18 admitted to the loss prevention officer that since April 2008, she had removed bottles of drugs
19 from the pharmacy's shelves and took them into the bathroom where she would conceal the drugs
20 in her lunch bag. Respondent admitted that she had taken at least 22 bottles containing various
21 quantities and strengths of alprazolam (Xanax), Suboxone, Norco, and Oxycontin. Respondent
22 stated that her female cousin, an associate of the Asian Crips gang, produced a gun and threatened
23 the life of her and her family if she did not steal the drugs. Respondent stated she would receive
24 text messages from her cousin directing her to steal drugs. Respondent would drop them off at
25 her cousin's house; her cousin would then sell the drugs on the street and share some of the
26 profits with Respondent.

27 24. On or about July 11, 2008, the San Diego Police Department conducted a "sting" in
28 order to obtain evidence to corroborate Respondent's claim that she stole the controlled

1 substances against her will. Under police surveillance, Respondent drove to her cousin's house to
2 drop off two bottles of drugs provided by the pharmacy. Respondent's cousin entered the vehicle,
3 which had been wired with a concealed audio device. Respondent told her cousin that she was
4 worried about being caught and no longer wanted to participate in stealing drugs. Respondent's
5 cousin made no effort to dissuade or convince Respondent to continue with their scheme. Both
6 women were arrested and taken into custody. Respondent's cousin allowed police to search her
7 room where the officers found a large quantity of prescription drugs in baggies and bottles.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(September 18, 2008 Criminal Conviction for Fraudulent Appropriation by an Employee)**

10 25. Respondent subjected her license to discipline under sections 490 and 4301,
11 subdivision (l), of the Code in that she was convicted of a crime that is substantially related to the
12 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

13 a. On or about September 18, 2008, in a criminal proceeding entitled *People of the*
14 *State of California v. Elisajoy E. Ramos*, in San Diego County Superior Court, case number
15 CD214750, Respondent was convicted on her plea of guilty for violating Penal Code section 508,
16 fraudulent appropriation by an employee of property in excess of \$400 grand theft, a felony.

17 b. As a result of the conviction, on or about October 30, 2008, Respondent
18 was sentenced to one day in jail, with credit for one day, three years formal probation, complete
19 15 days of public work service, and pay fines, fees, and restitution in the amount of \$4,746.37,
20 plus the cost of probation.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct - Commission of Acts Involving**
23 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

24 26. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
25 Code in that on or about and between June 1, 2008 and July 11, 2008, Respondent stole
26 controlled substances and dangerous drugs from her employer using fraud, deceit, and dishonesty,
27 as detailed in paragraphs 22 to 24, above. Such conduct is substantially related to the
28 qualifications, duties, and functions of a pharmacy technician.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violation of California Statutes Regulating**
3 **Controlled Substances & Dangerous Drugs)**

4 27. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
5 Code in that on or about on or about and between June 1, 2008 and July 11, 2008, Respondent
6 knowingly violated Business and Professions Code section 4059(a) regulating controlled
7 substances and dangerous drugs, as detailed in paragraphs 22 to 24, above. Such conduct is
8 substantially related to the qualifications, duties, and functions of a pharmacy technician.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Violating Federal & State Laws**
11 **& Regulations Governing Pharmacy)**

12 28. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
13 the Code in that on or about and between June 1, 2008 and July 11, 2008, Respondent violated
14 Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code
15 of Regulations, Title 16, Section 1700, *et seq.*), and the California Uniform Controlled Substances
16 Act (Health and Safety Code 11000, *et seq.*, including sections 11158(a), 11173(a), and 11351),
17 as detailed in paragraphs 22 to 24, above.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 83365,
22 issued to Elisajoy Espiritu Ramos;

23 2. Ordering Elisajoy Espiritu Ramos to pay the Board of Pharmacy the reasonable costs
24 of the investigation and enforcement of this case, pursuant to Business and Professions Code
25 section 125.3;

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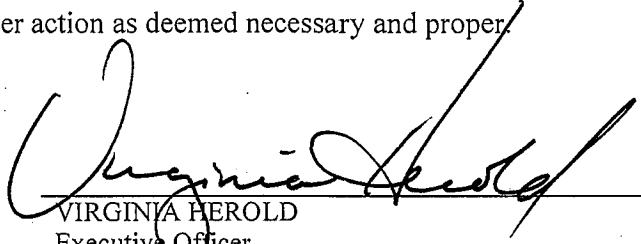
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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/14/09



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

SD2009803920