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

In the Matter of the Accusation Against: **THELMA IVENKA JIMENEZ** **27177 Terrytown Road** **Sun City, CA 92586** **Pharmacy Technician** **Registration No. TCH 50178** Respondent.	Case No. 3350 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 21, 2003, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 50178 to Thelma Ivenka Jimenez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

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JURISDICTION

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

4. Code section 118(b) provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action. Code section 4402, subdivision (e), provides that a Pharmacy Technician registration may be cancelled by the Board if the registration is not renewed within 60 days of its expiration.

5. Code section 4300, subdivision (a) provides that the Board may suspend or revoke every license issued by the Board.

STATUTORY PROVISIONS

6. Code section 4202, subdivision (d) provides that the Board may suspend or revoke any Pharmacy Technician registration on any ground specified in Code section 4301.

7. Section 4301 of the Code states:

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

". . . .

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

". . . .

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

". . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

". . . ."

8. Section 4059, subdivision (a), of the Code provides that a person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

9. Section 4060 of the Code provides that no person shall possess any controlled substance, except that furnished upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

10. Section 4329 of the Code provides that any non-pharmacist who furnishes controlled substances except as otherwise provided in the Pharmacy Law (Business and Professions Code section 4000 et seq.) is guilty of a misdemeanor.

11. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

". . . .

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

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

13. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

14. California Code of Regulations, title 16, section 1769, subdivision (b), states:

"(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."

15. 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."

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

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision 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, unless upon the written prescription of a physician, dentist, podiatrist or veterinarian licensed in this state, shall be punished by imprisonment in the state prison".

17. Health and Safety Code section 11352, subdivision (a), states:

"Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administrates, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision 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, unless upon the written prescription of a

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physician, dentist, podiatrist or veterinarian licensed in this state, shall be punished by imprisonment in the state prison for three, four, or five years."

18. Penal Code section 508 (embezzlement) states:

"Every clerk, agent or servant of any person who fraudulently appropriates to her own use, or secretes with a fraudulent intent to appropriate to her own use, any property of another which has come into her control or care by virtue of her employment as such clerk, agent, or servant, is guilty of embezzlement."

COST RECOVERY

19. Section 125.3 of the Code provides, 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.

CONTROLLED SUBSTANCES

20. Hydrocodone with acetaminophen, also known by the brand name Norco, is a narcotic Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4), and under Business and Professions Code section 4022 is a dangerous drug.

FACTS

21. Between July 1, and November 13, 2007, while employed as a Pharmacy Technician at Best Pharmacy, Respondent stole from her employer approximately 3,000 to 4,000 hydrocodone tablets, a controlled substance. Surveillance cameras were installed at Best Pharmacy and recorded Respondent doing the following on November 10, 2007, while working at Best Pharmacy: Respondent took hydrocodone tablets from the pharmacy's supply bottle and placed the hydrocodone tablets into the pocket of her Pharmacy Technician smock. By her own admission, Respondent later took the hydrocodone tablets out of her smock pockets and placed them into her purse. Respondent then exited the store with her purse and without paying for the hydrocodone concealed inside her purse. Respondent did not have a valid prescription for hydrocodone. By her own admission, Respondent provided hydrocodone to her mother and her uncle even though they did not have a valid prescription for hydrcodone.

22. On November 13, 2007, Respondent was arrested for violation of the following laws: Health and Safety Code section 111351 (unlawful transportation/sale/distribution of controlled substance), Penal Code section 503 (embezzlement), and Penal Code section 459 (burglary-entering business with intent to commit a felony crime). At the time of her arrest, Respondent provided the arresting officer with approximately 510 hydrocodone tablets that she admitted she had stolen from Best Pharmacy and had stored in her home.

23. On or about March 11, 2008, in a criminal proceeding entitled *People of the State of California v. Thelma Ivenka Jimenez*, in Riverside County Superior Court, case number SWF023592, Respondent was convicted on her plea of guilty of violating Health and Safety Code section 11352 (a) (Unlawful transportation/sale/distribution of controlled substance), to wit, hydrocodone, a felony.

24. As the result of her conviction, Respondent was sentenced to the following: three years formal probation, 90 days in the custody of county jail to be served on consecutive weekends, fines and restitution. Respondent is currently scheduled to complete her formal probation on or about March 10, 2011.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Possession of Controlled Substances)

25. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (j), in that she violated Code section 4060 and Health and Safety Code section 11350 by possessing the controlled substance hydrocodone without a valid prescription, as described above at paragraphs 21 and 22 which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Furnishing Controlled Substance to Others)

26. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (j), in that she violated Code section 4059 by furnishing hydrocodone to her mother and her uncle, even though each did not have a valid prescription for hydrocodone, as described above in paragraphs 21 and 22 which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty, Fraud or Deceit)

27. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (f), in that she committed acts involving moral turpitude, dishonesty, fraud or deceit while working as a Pharmacy Technician, as follows: Respondent stole approximately 3,000 to 4,000 hydrocodone tablets from her employer by concealing the hydrocodone in her Pharmacy Technician smock to remove it from the pharmacy, hiding the hydrocodone in her purse, and exiting the store with the hydrocodone in her purse and without paying for the hydrocodone, as described above in paragraphs 21 and 22 which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(March 11, 2008, Conviction for Unlawful Possession of Controlled Substances, for Sale, on November 13, 207)

28. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (l), in that she was convicted of violating Health and Safety Code section 11352 (a) (unlawful transportation/ sale/distribution of controlled substance – hydrocodone), a felony crime substantially related to the qualifications, functions and duties of a pharmacy technician, as described above in paragraphs 21 through 24 which are incorporated herein by reference.

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 Number TCH 50178, issued to Thelma Ivenka Jimenez.

2. Ordering Thelma Ivenka Jimenez to pay the Board of Pharmacy 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 deemed necessary and proper.

DATED: 8/11/09

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