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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. 3373

12 **FRANCES IRENE HABIG**
13 **AKA FRANCES IRENE FISHER**
19134 TROPICAL DRIVE
14 MODESTO, CA 95350

A C C U S A T I O N

15 ORIGINAL PHARMACY TECHNICIAN
16 REGISTRATION NUMBER TCH 45006

Respondent.

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 October 22, 2002, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 45006 to Frances Irene Habig (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 May 31, 2010, unless renewed.

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JURISDICTION

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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 unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board, whose
8 default has been entered or whose case has been heard by the board and found guilty, by any of
9 the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board in its
15 discretion may deem proper.

16 5. Section 4301 of the Code states, in pertinent part:

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

21 ...

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

25 ...

26 (h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
28 injurious to oneself, to a person holding a license under this chapter, or to any other person or to

1 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
2 the public the practice authorized by the license.

3 ...
4 (j) The violation of any of the statutes of this state, of any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

6 ...
7 (l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 ...
25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
26 the violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.

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(p) Actions or conduct that would have warranted denial of a license.

6. Section 475 of the Code states, in pertinent part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

...

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

7. Section 490 of the Code states, in pertinent part (emphasis added):

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

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

5 9. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
6 expiration of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed
7 with a disciplinary action during the period within which the license may be renewed, restored,
8 reissued or reinstated.

9 DRUGS

10 10. "Vicodin" and "Norco" are brand names for hydrocodone with acetaminophen, a
11 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4).

12 11. "Xanax" is a brand name for alprazolam, a Schedule IV controlled substance as
13 designated by Health and Safety Code section 11057(d)(1).

14 OTHER MATTERS

15 12. Federal law prohibits a pharmacy from employing any person who has been
16 convicted of a felony offense relating to controlled substances. (21 C.F.R. § 1301.76)

17 FIRST CAUSE FOR DISCIPLINE

18 (Conviction of a Crime)

19 13. Respondent is subject to disciplinary action under section 490 and 4301, subdivision
20 (l), in that she was convicted of a crime substantially related to the practice of a pharmacy
21 technician. The circumstances are as follows:

22 14. On or about September 9, 2008, in *People v. Frances Irene Habig* (Super. Ct.
23 Stanislaus County, 2008, No. 124508), Respondent was convicted on her plea of guilty to a
24 felony count of violation of Health and Safety Code section 11350(a) (possession of a controlled
25 substance) and a felony count of violation of Penal Code section 508 (embezzlement).

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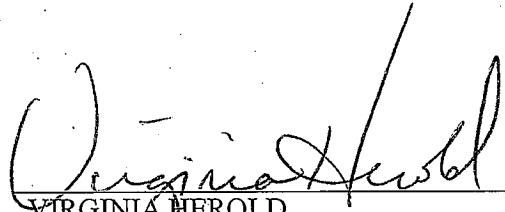
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PRAYER

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 Number TCH 45006, issued to Frances Irene Habig.
2. Ordering Frances Irene Habig 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/09



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

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