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

12 In the Matter of the Accusation Against:

Case No. 3436

13 **CHARRIZA C. MALUTO**
140 Jimenez Way
Hayward, California 94544

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH**
16 **47630**

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 19, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 47630 to Charriza C. Maluto (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on February 28, 2011, unless renewed.

25 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

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

22 ...

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
24 of a licensee under this chapter."

25 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
26 revoke a license when it finds that the licensee has been convicted of a crime substantially related
27 to the qualifications, functions or duties of the license.

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

2 "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 her license or registration in a
7 manner consistent with the public health, safety, or welfare."

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

12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
15 Code, by reference to Title 16, California Code of Regulations, section 1770, for the conviction of
16 the following crimes substantially related to the qualifications, functions, and duties of a
17 pharmacy technician.

18 a. On or about April 15, 1998, in *People v. Charriza Maluto*, Case No. 214868A
19 in Alameda County Superior Court, Respondent pleaded nolo contendere and was convicted of
20 violating Penal Code section 484(a) (Petty Theft), a misdemeanor. Imposition of sentence was
21 suspended in favor of a conditional probation of three (3) years, terms and conditions including 1
22 day in jail, fines, fees, and a stay away order (from Walmart stores in California). The crime
23 occurred on or about February 26, 1998, at approximately 3:15 p.m. wherein Respondent stole
24 items valued at less than \$400 from the Union City Walmart store. She was issued Citation No.
25 63090, charging her with violating Penal Code section 488 (Petty Theft).

26 b. On or about October 5, 2006, in *USA v. Charriza C. Maluto*, Case No. 4:05-cr-
27 00749-CW-1 in U.S. District Court for the Northern District, Respondent was convicted of
28 violating Penal Code section 487(a) (Grand Theft), a felony. The circumstances are as follows:

1 1. Between on or about March 2005 and September 2005, Respondent was
2 employed as a deposit processor at the Wells Fargo Bank Processing Center in Fremont,
3 California. In that position, she had access to checks and money orders intended for deposit into
4 customers' bank accounts. Between on or about July 19, 2005 and September 7, 2005, eighteen
5 customers reported to Wells Fargo that their deposits of traveler checks and money orders did not
6 post to their accounts. The Wells Fargo Bank Fraud Investigator assigned to the matter
7 discovered that between the eighteen customers, \$103,400.00 did not post to their accounts.

8 2. In or about September 2005, the Fraud Investigator submitted a complaint
9 to the Fremont Police Department in which Respondent was identified as the suspect for theft by
10 embezzlement.

11 3. On or about September 19, 2005, Respondent was contacted by the
12 Fremont Police, and admitted during police interview(s) to stealing approximately \$140,000 in
13 traveler checks and money orders from the Wells Fargo Processing Center and using them to buy
14 things for herself and others. She kept a record of every check and money order she stole in a
15 spiral binder. Entries in the spiral binder added up to \$258,409.42.

16 4. On or about September 22, 2005, Respondent was charged by criminal
17 complaint in Alameda County Superior Court, Court Number 214686-A, with (1) Penal Code
18 section 487(a) (Grand Theft by Embezzlement) and (2) Penal Code section 475(c) (Forgery), both
19 felonies.

20 5. On or about February 23, 2006, the Superior Court matter was dismissed
21 and sent to federal court to be prosecuted by the Federal Government.

22 6. On or about April 24, 2006, Respondent pleaded guilty in federal court to
23 Count One (Bank Embezzlement and Criminal Forfeiture), a felony. Imposition of sentence was
24 held on September 25, 2006. Respondent was sentenced to 11 months in prison, three years of
25 supervised release, \$100 fine and \$54,874 restitution.

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