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		RE THE
9 10	DEPARTMENT OF C	PHARMACY ONSUMER AFFAIRS
		CALIFORNIA
11 12	In the Matter of the Accusation Against:	Case No. 3459
12	CARMEN GONZALEZ	
_	27153 Lavender Street Sun City, CA 92585	ACCUSATION
14 15		
16	Pharmacy Technician Registration No. TCH 36174	
	Respondent.	
17		
18 19	Complainant alleges:	
20		TIES
		ings this Accusation solely in her official
21		
22	capacity as the Executive Officer of the Board of 2. On or about August 16, 2001, the Bo	
23		ard of Pharmacy issued Pharmacy Technician
24	Registration Number TCH 36174 to Carmen Go	
25	Registration was in full force and effect at all tim	
26	will expire on January 31, 2011, 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 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 of the Code states, in pertinent part:	
10	(a) Every license issued may be suspended or revoked.	
11	(b) The board shall discipline the holder of any license issued by the board, whose default	
12	has been entered or whose case has been heard by the board and found guilty, by any of the	
13	following methods:	
14	(1) Suspending judgment.	
15	(2) Placing him or her upon probation.	
16	(3) Suspending his or her right to practice for a period not exceeding one year.	
17	(4) Revoking his or her license.	
18	(5) Taking any other action in relation to disciplining him or her as the board in its	
19	discretion may deem proper.	
20	(c) The board may refuse a license to any applicant guilty of unprofessional conduct.	
21	6. Section 4301 of the Code states, in pertinent part:	
22	The board shall take action against any holder of a license who is guilty of unprofessional	
23	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.	
24	Unprofessional conduct shall include, but is not limited to, any of the following:	
25		
26	(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or	
27	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and	
28	whether the act is a felony or misdemeanor or not.	
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2	(1) The conviction of a crime substantially related to the qualifications, functions, and duties	
3	of a licensee under this chapterIn all other cases, the record of conviction shall be conclusive	
4	evidence only of the fact that the conviction occurred. The board may inquire into the	
5	circumstances surrounding the commission of the crime, in order to fix the degree of discipline	
6	or, in the case of a conviction not involving controlled substances or dangerous drugs, to	
7	determine if the conviction is of an offense substantially related to the qualifications, functions,	
8	and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a	
9	plea of nolo contendere is deemed to be a conviction within the meaning of this provision	
10		
11	(p) Actions or conduct that would have warranted denial of a license.	
12	7. Section 475 of the Code states:	
13	(a) Notwithstanding any other provisions of this code, the provisions of this division shall	
14	govern the denial of licenses on the grounds of:	
15	••••	
16	(2) Conviction of a crime.	
17	(3) Commission of any act involving dishonesty, fraud or deceit with the intent	
18	to substantially benefit himself or another, or substantially injure another.	
19	(4) Commission of any act which, if done by a licentiate of the business or	
20	profession in question, would be grounds for suspension or revocation of license.	
21	(b) Notwithstanding any other provisions of this code, the provisions of this division	
22	shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and	
23	(2) of subdivision (a).	
24	(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of	
25	good moral character or any similar ground relating to an applicant's character, reputation,	
26	personality, or habits.	
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8. Section 482 of the Code states: 1 Each board under the provisions of this code shall develop criteria to evaluate the 2 3 rehabilitation of a person when: (a) Considering the denial of a license by the board under Section 480; or 4 (b) Considering suspension or revocation of a license under Section 490. 5 Each board shall take into account all competent evidence of rehabilitation furnished by the 6 applicant or licensee. 7 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or 8 9 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 10 license was issued. 11 10. Section 493 of the Code states: 12 Notwithstanding any other provision of law, in a proceeding conducted by a board within 13 the department pursuant to law to deny an application for a license or to suspend or revoke a 14 license or otherwise take disciplinary action against a person who holds a license, upon the 15 ground that the applicant or the licensee has been convicted of a crime substantially related to the 16 qualifications, functions, and duties of the licensee in question, the record of conviction of the 17 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, 18 and the board may inquire into the circumstances surrounding the commission of the crime in 19 order to fix the degree of discipline or to determine if the conviction is substantially related to the 20 qualifications, functions, and duties of the licensee in question. 21 As used in this section, "license" includes "certificate," "permit," "authority," and 22 "registration." 23 Section 4313 of the Code states: 24 11. In determining whether to grant an application for licensure or whether to discipline or 25 26 reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and 27 28 public protection are in conflict, public protection shall take precedence.

1	REGULATIONS
2	12. California Code of Regulations, title 16, section 1770, states:
3	For the purpose of denial, suspension, or revocation of a personal or facility license
4	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5	crime or act shall be considered substantially related to the qualifications, functions or duties of a
6	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7	licensee or registrant to perform the functions authorized by his license or registration in a manner
8	consistent with the public health, safety, or welfare.
9	COST RECOVERY
10	13. Section 125.3 of the Code provides, in pertinent part, that the
11	Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
12	have committed a violation or violations of the licensing act to pay a sum not to exceed the
13	reasonable costs of the investigation and enforcement of the case.
14	FACTS
15	14. On or about February 29, 2008, in a criminal proceeding entitled <i>People v. Carmen</i>
16	Gonzalez, in the Superior Court of California, County of Riverside, Case No. SWF024701,
17	Respondent was convicted by her plea of guilty to violation of Penal Code section 503
18	(embezzlement), reduced to a misdemeanor pursuant to the plea agreement and pursuant to Penal
19	Code section 17(b).
20	15. Respondent was sentenced to three years of summary probation, 60 days in county
21	jail, payment of restitution to the victim, and fines in the amount of \$265.00.
22	16. The circumstances of the crime are that on or about January 22, 2008, while
23	Respondent was working as a Pharmacy Technician at Albertson's in Murrieta, an officer from
24	the Murrieta Police Department was dispatched to the store to investigate a report of
25	embezzlement from the Albertson's Loss Prevention. The officer spoke with the Loss Prevention
26	Agent (LPA). The LPA explained that Albertson's had a promotion in which a new pharmacy
27	customer could receive up to \$35.00 as a gift card for purchasing their prescriptions at
28	Albertson's. Customers could also receive a \$10.00 gift card for each fifth prescription presented.
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The LPA said that Respondent had been employed by Albertson's since February 2007 as a
 pharmacy technician. The LPA further stated that she had examined several transactions by
 Respondent since December 2, 2007 in which Respondent generated gift cards for customers and
 then failed to give them the gift cards. Respondent then spent the gift cards at Albertson's on
 groceries.

17. The LPA was able to locate fourteen cards which were generated by Respondent and 6 then in turn were redeemed or used to purchase groceries at Albertson's by Respondent. The total 7 loss to Albertson's was \$500.00. The LPA viewed Respondent on video generating and then 8 using the gift cards. The LPA showed the officer the transactions she had retrieved and pointed 9 out the gift card number generated by Respondent, and then matched the gift card number with 10 the purchase of merchandise and groceries at Albertson's. The LPA was able to track 11 Respondent's use of the gift cards because Respondent also used her Albertson's customer card 12 number to receive additional savings, along with the gift card, to make the purchases. The LPA 13 stated that a total of \$1200.00 worth of gift cards were generated by Respondent, but only 14 \$500.00 was redeemed for merchandise and/or groceries. 15

16 18. The LPA provided the officer with transaction evidence of the embezzlement. The 17 LPA also stated that there was photographic evidence. The officer observed a transaction in 18 which Respondent swiped a card in the reader when no customer was present. The LPA had 19 contacted Respondent prior to the officer's arrival, and had interviewed her about the 20 transactions. Respondent admitted wrongdoing and wrote a statement further admitting to the 21 embezzlement.

19. Respondent was advised of her Miranda rights, waived them, and provided a
statement to the officer. In the statement, Respondent admitted to the embezzlement of gift cards
from the Albertson's pharmacy. Respondent admitted that she would generate gift cards for
customers without a coupon and without the customer's knowledge. When the customer would
return to pick up the prescription, she would purposely leave the gift card in the prescription bag.
She would complete the transaction and give the prescription to the customer. When the
customer left, she would then retrieve the gift card from the prescription bag and place it in her

1	shirt or jacket pocket. Respondent further stated that she would only create one false gift card
2	transaction per day so the manager or other employees would not notice what she was doing.
3	Respondent stated that she spent all of the gift cards. Respondent stated that she did not know
4	why she did it; she was unable to provide the officer with any explanation.
5	20. Respondent was arrested at the conclusion of the interview and charged with a
6	violation of Penal Code section 503 (embezzlement over \$400.00), a felony.
7	FIRST CAUSE FOR DISCIPLINE
8	(February 29, 2008 Criminal Conviction for Embezzlement on or about January 22, 2008)
9	21. Respondent is subject to disciplinary action under Code sections 490, and 4301(l), in
10	that she was convicted of a crime substantially related to the duties, functions, and qualifications
11	of a pharmacy technician, as described in paragraphs 14 through 20, above.
12	SECOND CAUSE FOR DISCIPLINE
13	(Unprofessional Conduct- Dishonest Act)
14	22. Respondent is subject to disciplinary action under Code section 4301(f) in that she
15	committed acts involving moral turpitude, dishonesty, deceit or corruption when she embezzled
16	\$500.00 from her employer and failed to provide customers with gift cards they were entitled to,
17	instead wrongfully withholding them for her own personal use, as described in paragraphs 14
18	through 20, above.
19	THIRD CAUSE FOR DISCIPLINE
20	(Unprofessional Conduct- Conduct Warranting Denial of Licensure)
21	23. Respondent is subject to disciplinary action under Code section 4301(f) in that she
22	committed acts involving moral turpitude, dishonesty, deceit or corruption. Specifically, on or
23	about January 20, 2009, Respondent renewed her Pharmacy Technician Registration and failed to
24	disclose the criminal conviction detailed above, in paragraphs 14 through 20, on the renewal
25	application. Respondent marked "NO" to the question asking is she had been convicted of any
26	crime since the last renewal.
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1	FOURTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct- Conduct Warranting Denial of Licensure)
3	24. Respondent is subject to disciplinary action under Code section 4301(p), in that she
4	committed acts which, if she had committed before she were issued her Pharmacy Technician
5	Registration, would have warranted the denial of her application for licensure in that she
6	embezzled \$500.00 from her employer and failed to provide customers with gift cards they were
7	entitled to, instead wrongfully withholding them for her own personal use, as described in
8	paragraphs 14 through 20, above.
9	PRAYER
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11	and that following the hearing, the Board of Pharmacy issue a decision:
12	1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
13	36174, issued to Respondent Carmen Gonzalez.
14	2. Ordering Respondent Carmen Gonzalez to pay the Board of Pharmacy the reasonable
15	costs of the investigation and enforcement of this case, pursuant to Business and Professions
16	Code section 125.3;
17	3. Taking such other and further action as deemed necessary and proper.
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19 20	$261$ , $1)$ $\cdot$ $\cdot$ $\cdot$
21	DATED: 2/3/10 VIRGINIA)HEROLD
22	Executive-Officer Board of Pharmacy
23	Department of Consumer Affairs State of California
24	Complainant
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