1       EDMUND G. BROWN JR., Attorney General of the State of California         2       ARTHUR D. TAGGART, Supervising Deputy Attorney General         3       STERLING A. SMITH, State Bar No. 84287 Deputy Attorney General         4       California Department of Justice 1300 I Street, Suite 125         5       P.O. Box 944255         5       Sacramento, CA 94244-2550         7       Telephone: (916) 445-0378         7       Attorneys for Complainant         8       9         9       BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA         11       12         12       In the Matter of the Accusation Against: 460 East Sequoia       Case No. 3520         14       ROBERT ADRIAN CASTENADA 460 East Sequoia       ACCUSATION         15       Woodlake, California 93286       ACCUSATION							
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74030	•						
17 Respondent.							
18							
19 Virginia Herold ("Complainant") alleges:	Virginia Herold ("Complainant") alleges:						
20 PARTIES							
21 1. Complainant brings this Accusation solely in her official capacity as	the						
22 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.							
2. On or about February 10, 2007, the Board of Pharmacy issued Pharmacy							
24 Technician Registration Number TCH 74030 to Robert Adrian Castenada (Respondent).	Гhe						
25 license will expire on September 30, 2010, unless renewed.							
26 <u>JURISDICTION</u>	JURISDICTION						
27 3. This Accusation is brought before the Board of Pharmacy (Board),							
28 Department of Consumer Affairs, under the authority of the following laws. All section							
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1	references are to the Business and Professions Code unless otherwise indicated.								
2	4. Section 4300 of the Code states, in pertinent part:								
3	"(a) Every license issued may be suspended or revoked.								
4	"(b) The board shall discipline the holder of any license issued by the board,								
5	whose default has been entered or whose case has been heard by the board and found guilty, by								
6	any of the following methods:								
7	"(1) Suspending judgment.								
8	"(2) Placing him or her upon probation.								
9	"(3) Suspending his or her right to practice for a period not exceeding one year.								
10	"(4) Revoking his or her license.								
11	"(5) Taking any other action in relation to disciplining him or her as the board in								
12	its discretion may deem proper.								
13	5. Section 4301 of the Code states, in pertinent part:								
14	"The board shall take action against any holder of a license who is guilty of								
15	unprofessional conduct or whose license has been procured by fraud or misrepresentation or								
16	issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the								
17	following:								
18									
19	"(f) The commission of any act involving moral turpitude, dishonesty, fraud,								
20	deceit, or corruption, whether the act is committed in the course of relations as a licensee or								
21	otherwise, and whether the act is a felony or misdemeanor or not.								
22									
23	"(j) The violation of any of the statutes of this state or of the United States								
24	regulating controlled substances and dangerous drugs.								
25	(1) The conviction of a crime substantially related to the qualifications, functions,								
26	and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13								
27	(commencing with Section 801) of Title 21 of the United States Code regulating controlled								
28	substances or of a violation of the statutes of this state regulating controlled substances or								

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 3 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 4 5 or dangerous drugs, to determine if the conviction is an offense substantially related to qualifications, functions, and duties of a licensee under this chapter. A plea of guilty or a 6 7 conviction following a plea of nolo contendre is deemed to be a conviction within the meaning 8 of this provision. The board may take action when the time for appeal has elapsed, or the 9 judgment of conviction has been affirmed on appeal or when an order granting probation is made 10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 11 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of 12 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 13 indictment."

14 6. Section 111, subdivision (b) of the Code provides, in pertinent part, that 15 "the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the 16 department, or its suspension, forfeiture, or cancellation by order of the board or by order of a 17 court of law, or its surrender without the written consent of the board, shall not, during any 18 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its 19 authority to institute or continue a disciplinary proceeding against the licensee upon any ground 20 provided by law or to enter an order suspending or revoking the license or otherwise taking 21 disciplinary action against the licensee on any such ground".

22 7. Section 4021 of the Code provides that "controlled substance' means any
23 substance listed in Chapter 2 (commencing with Section 11053 of Division 10 of the Health &
24 Safety Code".

8. Health and Safety Code section 11170 provides that "no one shall
prescribe, administer or furnish a controlled substance for himself."

27
 9. Section 4060 of the Code provides, in pertinent part, that no person shall
 28 possess any controlled substance, except that furnished to a person upon lawful prescription.

1 10. Penal Code section 496, subdivision (a), provides, in pertinent part, that
 2 "every person who buys or receives any property that has been stolen or that has been obtained
 3 in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or
 4 who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from
 5 the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment
 6 in a state prison, or in a county jail for not more than one year."

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

Hydrocodone is a Schedule III controlled substance as designated by
 Health and Safety Code section 11056(e)(4).

13 14. Viagra is a dangerous drug within the meaning of section 4022 of the
14 Code.

15 15. Tylenol with Codeine is a Schedule III controlled substance as designated
16 by Health and Safety Code section 11056(e)(2).

16. Cialis is a dangerous drug within the meaning of section 4022 of the Code.

## FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

17. 20 Respondent is subject to disciplinary action under sections 4301(k) and 21 4301(1) in that on or about July 24, 2009, he was convicted by his plea of nolo contendre to 22 violation of Penal Code section 496(a), a felony, in People v. Robert Adrian Castenada, Tulare 23 County Superior Court Case No. VCF221385, a crime substantially related to the qualifications, 24 functions, and duties of a pharmacy technician. The circumstances of the conviction are that 25 Respondent diverted Hydrocodone, Tylenol with Codeine, Cialis and Viagra for his own use that 26 were the property of Foothill Drugs, his employer, while Respondent was on duty as a pharmacy 27 technician.

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1	SECOND CAUSE FOR DISCIPLINE	
2	(Acts of Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)	I
3	18. Respondent is subject to disciplinary action under section 4301(f) by	
4	committing acts involving moral turpitude, dishonesty fraud, deceit, or corruption. In addition to	
5	the facts alleged in Paragraph 17, Respondent sold or otherwise distributed some of the aforesaid	
6	controlled substances and dangerous drugs to others.	
. 7	THIRD CAUSE FOR DISCIPLINE	1
8	(Violation of Drug Laws)	
9	15. Based upon the allegations of Paragraphs 17 and 18, Respondent is subject	
10	to disciplinary action under section 4301(j), in conjunction with Section 4060 of the Code and	
11	Health and Safety Code sections 11170, by his possession of the aforesaid medications without a	
12	lawful prescription, and by his self-administration of Hydrocodone, in violation of California	
13	statutes regulating controlled substances and dangerous drugs.	
14	PRAYER	
15	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
16	alleged, and that following the hearing, the Board of Pharmacy issue a decision:	
17	A. Revoking or suspending Pharmacy Technician Registration Number TCH	
18	74030 issued to Robert Adrian Castenada;	
19	B. Ordering Robert Adrian Castenada to pay the Board of Pharmacy the	
20	reasonable costs of the investigation and enforcement of this case, pursuant to Business and	
21	Professions Code section 125.3;	
22	C. Taking such other and further action as deemed necessary and proper.	
23		
24	DATED: 12610	
25	timerin the world	
26	WRGINIA/HBROLD Executive Officer	
27	Board of Pharmacy Department of Consumer Affairs	
28	State of California, Complainant	
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