EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
ERIN M. SUNSERI
Deputy Attorney General
State Bar No. 207031
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2071
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **JENA CASTILLO GABRIEL; aka** **JEN HANNA CASTILLO** **P. O. Box 4028** **Oceanside, CA 92052** **Pharmacy Technician License No. 54611** Respondent.	Case No. 3578 **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 April 20, 2004, the Board of Pharmacy issued Pharmacy Technician License No. 54611 to Jena Castillo Gabriel (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

///

///

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 unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

(c) The board may refuse a license to any applicant guilty of unprofessional conduct...

. . . .

STATUTORY PROVISIONS

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

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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

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

. . . .

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

. . . .

7. 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:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(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.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

8. 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:

(a) Considering the denial of a license by the board under Section 480; or

(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.

9. 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.

10. 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."

11. Section 4313 of the Code states:

In determining whether to grant an application for licensure or whether to discipline or 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 public protection are in conflict, public protection shall take precedence.

REGULATIONS

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

When considering the suspension or revocation of a facility or 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 her present eligibility for a license will consider the following:

(1) The nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) Time that has elapsed since the 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.

13. 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.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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.

FACTS

15. On or about March 5, 2009, in a criminal proceeding entitled *People v. Jena Castillo Gabriel*, in the Superior Court of California, County of San Diego East County Division, Case No. CE287776, Respondent was convicted by her plea of guilty to violation of Penal Code section 487(a) (grand theft of personal property), reduced to a misdemeanor pursuant to the plea agreement and payment of full restitution to the victim in the amount of $2,100.00.

16. Respondent was sentenced to three years of summary probation, one day in the county jail with a credit of one day for time served, payment of fines and fees in the amount of $1,068.00, and probation costs in the amount of $1,127.00. Respondent was ordered to stay away from all Target stores.

17. The circumstances of the crime are that on or about January 28, 2009, while Respondent was working as a Pharmacy Technician at Target in El Cajon, an officer from the El Cajon Police Department was dispatched to the store to investigate a report of grand theft from the Target's Loss Prevention. The officer spoke with the Loss Prevention Agent (LPA), who explained that on December 22, 2008, he was alerted by a central sales auditor of cash shortages appearing on the pharmacy registers in the store. The LPA opened an investigation and began monitoring activity there, focusing on an employee (Respondent) who was present when these losses were occurring. The LPA began observing videotape of her actions, and after placing a covert camera at the registers, was able to watch on videotape as Respondent took money over numerous days and stole this money from the store. On January 28, 2009, the LPA interviewed

Respondent, and after she admitted to taking the money, placed her under citizen's arrest for grand theft and contacted the police.

18. The LPA told the police officer that he documented 15 cases where he observed Respondent take various amounts of money from the register and place the cash in her smock pocket and not return the money. The LPA told the police officer that the registers had approximately 90 instances where they were short amounts of money which were nearly always $20.00. These thefts amounted to approximately $2,100.00 in cash. The LPA told the police officer that during his interview with Respondent, she confessed to stealing the approximately $2,100.00 that the LPA calculated.

19. The arresting police officer's report states that upon questioning, Respondent was advised of her Miranda rights, waived them, and Respondent advised the officer that she and her husband made enough money to meet their bills and obligations, and that there was no reason for taking the money. Respondent told the officer that the money was all probably currently in her bank account. Respondent admitted to the officer that she knew what she was doing was wrong, and that she also knew that because she had no real reason for needing the money, she should not be doing it. Respondent told the officer that she kept trying to stop taking the money.

20. Respondent was arrested and charged with a violation of Penal Code sections 508 (fraudulent appropriation by clerk, agent or employee) and 487(a) (grand theft of personal property).

FIRST CAUSE FOR DISCIPLINE

(March 5, 2009 Criminal Conviction for Grand Theft on January 28, 2009)

21. Respondent is subject to disciplinary action under Code sections 490, and 4301(l), in that she was convicted of a crime substantially related to the duties, functions, and qualifications of a pharmacy technician, as described in paragraphs 15-20, above.

///

///

///

///

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Dishonest Act)

22. Respondent is subject to disciplinary action under Code section 4301(f) in that she committed acts involving moral turpitude, dishonesty, deceit or corruption when she stole $2,100.00 from her employer, as described in paragraphs 15-20, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conduct Warranting Denial of Licensure)

23. Respondent is subject to disciplinary action under Code sections 4301(f) in that she committed acts involving moral turpitude, dishonesty, deceit or corruption. Specifically, on or about September 16, 2009, Respondent renewed her pharmacy technician license and failed to disclose the conviction detailed above, in paragraphs 15-20, on the renewal application. Respondent marked "No" to the question asking if she had been convicted of any crime since the last renewal in 2007.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Knowingly Signing any Document that Falsely Represents the existence or nonexistence of a State of Facts)

24. Respondent is subject to disciplinary action under Code sections 4301(g) in that she knowingly made or signed any certificate or other document that falsely represented the existence or nonexistence of a state of facts. Specifically, on or about September 16, 2009, Respondent renewed her pharmacy technician license and failed to disclose the conviction detailed above, in paragraphs 15-20, on the renewal application. Respondent marked "No" to the question asking if she had been convicted of any crime since the last renewal in 2007, knowing that she had pled guilty and been convicted of a crime since the last renewal in 2007.

///

///

///

///

///

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Conduct Warranting Denial of Licensure)

25. Respondent is subject to disciplinary action under Code section 4301(p), in that she committed acts which, if she had committed before she were issued her Pharmacy Technician License, would have warranted the denial of her application for licensure in that she stole $2,100.00 from her employer, as described in paragraphs 15-20, above.

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 License Number 54611, issued to Respondent Jena Castillo Gabriel;

2. Ordering Respondent Jena Castillo Gabriel 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: 5/6/10

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

SD2010800049
80446289.doc