

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3595

12 **MARISSA PASCUA**
13 **1041 Via Miraleste**
Chula Vista, CA 91910

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **45411**

16 Respondent.

17
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 30, 2002, the Board of Pharmacy issued Pharmacy Technician
23 License No. TCH 45411 to Marissa Pascua (Respondent). The Pharmacy Technician License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 January 31, 2012, unless renewed.

26 ///

27 ///

28 ///

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 (Code) unless otherwise indicated.

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

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

5. 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.

STATUTORY PROVISIONS

6. Section 4301 of the Code states:

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.

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

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

....

1 7. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe
3 for self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits
5 dispensing without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts this
7 device to sale by or on the order of a _____," "Rx only," or words of similar
8 import, the blank to be filled in with the designation of the practitioner licensed to
9 use or order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 8. Section 4060 of the Code states:

13 No person shall possess any controlled substance, except that furnished to a
14 person upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
16 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
17 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
18 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
19 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
20 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
21 section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
23 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled
25 with the name and address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 stock of dangerous drugs and devices.

9. Health & Safety Code section 11170 states that "[n]o person shall prescribe,
administer, or furnish a controlled substance for himself."

10. Health & Safety Code section 11173 states in pertinent part that no person shall
obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

COSTS

11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUG

4 12. Phentermine is designated by Health and Safety Code section 11057(f)(2) as a
5 Schedule IV controlled substance, and by Business and Professions Code section 4022 as a
6 dangerous drug, and is used as a stimulant.

7 FIRST CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct – Dishonest Acts)

9 13. Respondent is subject to disciplinary action under Code section 4301(f) in that she
10 engaged in acts involving moral turpitude, dishonesty, fraud and deceit when she stole controlled
11 substances from her employer. The circumstances are as follows:

12 14. On or about April 18, 2007, Respondent was working as a pharmacy technician at
13 Rite Aid Pharmacy in Bonita, California. On April 18, 2007, Rite-Aid Pharmacy staff discovered
14 there were only 2 tablets of Phentermine 30 mg in a container that should have contained ninety
15 (90) capsules. An audit was performed and it was discovered that there was a total loss of 184
16 capsules/tablets of various strengths of Phentermine. On May 3, 2007, pharmacy staff was
17 interviewed regarding the loss and Respondent admitted to taking the missing Phentermine.
18 Respondent admitted that she took the Phentermine from the pharmacy and that she ingested 1 to
19 3 tablets of Phentermine a day while working at the pharmacy. Respondent admitted that she did
20 not have a prescription for Phentermine.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct - Self Administration of a Controlled Substance)

23 15. Respondent is subject to disciplinary action under Code section 4301(h) in
24 conjunction with Health and Safety Code section 11170 in that she administered to herself a
25 controlled substance, as more particularly alleged in paragraph 14 above, and incorporated herein
26 by reference.

27 ///

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Illegal Furnishing of a Controlled Substance to Oneself)

3 16. Respondent is subject to disciplinary action under Code section 4301(j) in
4 conjunction with Health & Safety Code section 11170 for illegally furnishing a controlled
5 substance to herself, as more particularly alleged in paragraph 14 above, and incorporated herein
6 by reference.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct - Possession of a Controlled Substance Without a Prescription)

9 17. Respondent is subject to disciplinary action under Code section 4301(j) in
10 conjunction with Code section 4060 in that Respondent was in possession of a controlled
11 substance without a legitimate prescription, as more particularly alleged in paragraph 14 above,
12 and incorporated herein by reference.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct - Dispensing While Under the Influence)

15 18. Respondent is subject to disciplinary action under Code section 4301(h) in that she
16 used a dangerous drug to the extent or in a manner as to be dangerous or injurious to others and to
17 the extent that the use impairs the ability of the person to conduct with safety to the public the
18 practice authorized by the license when she worked as a pharmacy technician and dispensed
19 medication while she was under the influence of Phentermine, as more particularly alleged in
20 paragraph 14 above, and incorporated herein by reference.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Pharmacy issue a decision:

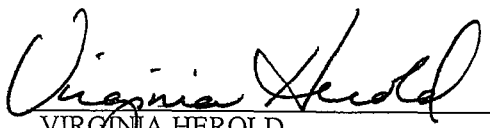
24 1. Revoking or suspending Pharmacy Technician License No. TCH 45411, issued to
25 Marissa Pascua;

26 2. Ordering Marissa Pascua to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/28/10



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

SD2010800122
80458819.docx