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

11 In the Matter of the Accusation Against:

Case No. 3621

12 **LINDA SAMI BRYANT**  
13 **3303 S. Archibald Avenue, #289**  
14 **Ontario, CA 91761**

**ACCUSATION**

15 **Pharmacy Technician Reg. No. TCH 44259**

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 November 18, 2002, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 44259 to Linda Sami Bryant (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on December 31, 2010, unless renewed.

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## 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, subdivision (a), provides that every license issued may be revoked or suspended.

## STATUTORY PROVISIONS

6. 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.

Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-2008 Regular Session.

7. 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.

8. Section 4022 of the Code states:

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

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

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

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

9. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.61, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1.

10. 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:

....

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

4 . . . .

5 (l) The conviction of a crime substantially related to the qualifications,  
6 functions, and duties of a licensee under this chapter. The record of conviction  
7 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
8 United States Code regulating controlled substances or of a violation of the statutes  
9 of this state regulating controlled substances or dangerous drugs shall be conclusive  
10 evidence of unprofessional conduct. In all other cases, the record of conviction  
11 shall be conclusive evidence only of the fact that the conviction occurred. The  
12 board may inquire into the circumstances surrounding the commission of the crime,  
13 in order to fix the degree of discipline or, in the case of a conviction not involving  
14 controlled substances or dangerous drugs, to determine if the conviction is of an  
15 offense substantially related to the qualifications, functions, and duties of a licensee  
16 under this chapter. A plea or verdict of guilty or a conviction following a plea of  
17 nolo contendere is deemed to be a conviction within the meaning of this provision.  
18 The board may take action when the time for appeal has elapsed, or the judgment  
19 of conviction has been affirmed on appeal or when an order granting probation is  
20 made suspending the imposition of sentence, irrespective of a subsequent order  
21 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her  
22 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,  
23 or dismissing the accusation, information, or indictment.

24 . . . .

25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
26 abetting the violation of or conspiring to violate any provision or term of this chapter  
27 or of the applicable federal and state laws and regulations governing pharmacy,  
28 including regulations established by the board or by any other state or federal  
regulatory agency.

. . . .

## REGULATORY PROVISIONS

11. Title 16, California Code of Regulations, section 1769 states:

. . . .

(b) When considering the suspension or revocation of a facility or a  
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 his present eligibility for a license will consider the following criteria:

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

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with all terms of parole, probation,  
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) Evidence, if any, of rehabilitation submitted by the licensee.

5 12. Title 16, California Code of Regulations, section 1770 states:

6 For the purpose of denial, suspension, or revocation of a personal or  
7 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
8 Business and Professions Code, a crime or act shall be considered substantially  
9 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.

#### 10 COST RECOVERY

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

#### 15 DRUGS

16 14. Hydrocodone combined with acetaminophen is a Schedule III controlled substance as  
17 designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug  
18 pursuant to Business and Professions Code section 4022.

#### 19 FIRST CAUSE FOR DISCIPLINE

20 (April 22, 2009 Criminal Conviction for Grand Theft in August Through November 2008)

21 15. Respondent subjected her license to discipline under sections 490 and  
22 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related  
23 to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as  
24 follows:

25 16. On or about April 22, 2009, in a criminal proceeding entitled *People of the State of*  
26 *California v. Linda Sami Bryant*, in Orange County Superior Court, case number 08SF0964 FA,  
27 Respondent was convicted on her plea of guilty for violating Penal Code section 487, subdivision  
28 (a) (grand theft), a felony.

17. The facts that led to the conviction are that between November 2007 and November 2008, while Respondent was employed at the Longs Drug Store #242, located at 27750 Santa Margarita Parkway, Mission Viejo, CA 92691, she stole 6,918 hydrocodone tablets from the pharmacy. The stolen hydrocodone had a value of \$1,404.14. Respondent used the pharmacy's inventory system to hide the thefts by making false inventory updates. Pharmacy staff installed surveillance cameras which show Respondent taking the controlled substances.

18. On November 3, 2008, Respondent was interviewed by pharmacy staff regarding the thefts, and admitted taking the controlled substances, and updating the inventory system to hide the thefts. Respondent wrote an "Admission" letter for pharmacy loss prevention staff. The pharmacy's loss prevention staff detained Respondent and called the Orange County Sheriff's Office to report the incident. Respondent admitted the thefts to Sheriff's deputies and told them she stole the controlled substances for a friend.

19. As a result of the conviction, Respondent was sentenced and placed on formal probation for three (3) years, ordered to violate no law, serve 60 days in the Orange County Jail, with 2 days credit for time served. Respondent was also ordered, among other things, to pay \$450 in fees and fines, ordered to pay restitution with 10% interest, submit to DNA testing, ordered to not use unauthorized drugs, submit to drug or narcotic testing, and to submit to search and seizure.

## SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

20. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that between or about November 2007 to November 2008, while working as a pharmacy technician, Respondent stole controlled substances and dangerous drugs from her employer, Longs Drug Store, using fraud, deceit, and dishonesty, as detailed in paragraphs 16-19, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Violation of California Statutes Regulating  
3 Controlled Substances & Dangerous Drugs)

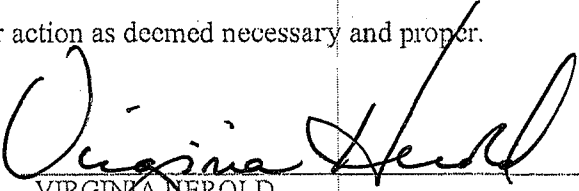
4 21. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
5 Code for violation of the Pharmacy Act, in that between or about November 2007 and November  
6 2008, while working as a pharmacy technician, she unlawfully possessed controlled substances  
7 and dangerous drugs, in violation of Code section 4060, as detailed in paragraphs 16-19, above.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 44259,  
12 issued to Linda Sami Bryant;
- 13 2. Ordering Linda Sami Bryant to pay the Board of Pharmacy the reasonable costs of the  
14 investigation and enforcement of this case, pursuant to Business and Professions Code section  
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: 6/1/10

  
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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26 SD2010800257  
27 80459104  
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