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

12 In the Matter of the Accusation Against:

Case No. 3928

13 **GABRIELA GALLEGOS**
3840 Walnut
14 Lynwood, CA 90262
Pharmacy Technician Registration No. TCH
36152

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about June 8, 2001, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 36152 to Gabriela Gallegos (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on July 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Code states:

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

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

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

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

9 "(4) Revoking his or her license.

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

12 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
13 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
14 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
15 may issue the license subject to any terms or conditions not contrary to public policy, including,
16 but not limited to, the following:

17 "(1) Medical or psychiatric evaluation.

18 "(2) Continuing medical or psychiatric treatment.

19 "(3) Restriction of type or circumstances of practice.

20 "(4) Continuing participation in a board-approved rehabilitation program.

21 "(5) Abstention from the use of alcohol or drugs.

22 "(6) Random fluid testing for alcohol or drugs.

23 "(7) Compliance with laws and regulations governing the practice of pharmacy.

24 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
25 certificate of licensure for any violation of the terms and conditions of probation. Upon
26 satisfactory completion of probation, the board shall convert the probationary certificate to a
27 regular certificate, free of conditions.

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1 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
3 shall have all the powers granted therein. The action shall be final, except that the propriety of
4 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
5 Civil Procedure."

6 5. Section 4301 of the Code states:

7 "The board shall take action against any holder of a license who is guilty of unprofessional
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
9 Unprofessional conduct shall include, but is not limited to, any of the following:

10 ...

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

14 ...

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

20 ...

21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

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

10 ...

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

15 ...

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

17 ...

18 6. Section 4059, subdivision (a) of the Code provides in pertinent part that a person
19 may not furnish any dangerous drug, except upon the prescription of a physician, dentist,
20 podiatrist, optometrist, veterinarian or other legally authorized prescriber.

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

25 REGULATORY PROVISIONS

26 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 COST RECOVERY

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

10 DRUG CLASSIFICATIONS

11 10. **Carisoprodol** - also known by the brand name “Soma,” is a muscle relaxant used
12 for relief of pain. It is not a controlled substance but is categorized as a dangerous drug pursuant
13 to Business and Professions Code section 4022.

14 11. **Tramadol** - also known by the brand name “Ultram” is a used for relief of
15 moderate to severe pain. It is not a controlled substance but is categorized as a dangerous drug
16 pursuant to Business and Professions Code section 4022.

17 FIRST CAUSE FOR DISCIPLINE

18 (Convictions For Substantially Related Crime)

19 12. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
20 section 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
21 Respondent was convicted of a crime substantially related to the qualifications, functions or
22 duties of a pharmacy technician on November 19, 2010, as described below.

23 DRIVING UNDER INFLUENCE OF ALCOHOL (2010)

24 a. On or about November 19, 2010, pursuant to a plea agreement, Respondent was
25 convicted after pleading guilty to a misdemeanor violation of Vehicle Code section 23152(b)
26 [Driving Under The Influence /Blood Alcohol Level Exceeding .08%] in the criminal proceeding
27 entitled *People of the State of California v. Gabriela Gallegos* (Super. Ct. Los Angeles County,
28

1 2010, No. 0BF0376401). Respondent was placed on probation for a period of 3 years, required to
2 complete a First Offender Program and ordered to pay fines and specified fees.

3 b. The circumstances of the conviction are that on or about June 5, 2010, California
4 Highway Patrol officers on routine patrol noticed two vehicles parked on the shoulder of the
5 freeway flashing emergency lights and stopped to assist. Drivers of both vehicles were instructed
6 to exit the freeway. In interacting with one of the drivers, identified as Respondent, one of the
7 officers smelled the odor of alcohol coming from her vehicle. The officer inquired whether she
8 had been drinking. Respondent admitted that she had ingested "about 4 small bottles of (beer)" at
9 a bar prior to driving. A series of field sobriety tests were administered, which Respondent was
10 unable to complete in a satisfactory manner. She was then arrested. Subsequent alcohol screening
11 showed .105 and .115 blood alcohol content.

12 SECOND CAUSE FOR DISCIPLINE

13 (Dishonest Acts)

14 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), for
15 dishonest acts, based on her admitted theft of prescriptions pain medications (**Carisoprodol 350**
16 **mg (30 tablets); and Tramadol 50 mg (30 tablets)**) while on duty as a pharmacy technician at the
17 inpatient pharmacy for Miller Children's Hospital ("Children's"), on or about November 26,
18 2009, by reason of the following facts:

19 a. On or about November 26, 2009, Respondent was on duty as a pharmacy
20 technician for the in-patient pharmacy at Children's, where she had been employed since 2002.

21 b. Children's is part of and adjacent to Long Beach Memorial Hospital (LBMH).
22 Staff at the in-patient pharmacy of Children's routinely obtained out-of-stock medications as
23 needed from the larger LBMH pharmacy. Further, pharmacy staff at both facilities could access
24 medication records for all patients at Children's and LBMH, via an integrated computer program.

25 c. On or about 12:30 pm, Respondent faxed a request for 30 tablets of
26 Carisoprodol 350 mg and 30 tablets of Tramadol 50 mg to the LBMH pharmacy.

27 d. When the order was delivered to Children's – the receiving technician
28 questioned the order, as no Children's patient was currently using either medication. Respondent

1 told the technician “these are mine” – then took the package of medications.

2 e. On or about November 29, 2009, during her shift, co-workers observed that
3 Respondent seemed sedated, and throughout the morning was unusually irritable and made
4 frequent mistakes. At the lunch break, Respondent stated she was “really tired” and planned to
5 take a nap. Respondent failed to return to work on time and was eventually sent home.
6 Suspicions about the cause of Respondent’s altered behavior resulted in investigation of
7 Respondent’s faxed order to LBMH two days earlier.

8 f. On or about December 4, 2009 Respondent was confronted by Children’s
9 supervisory staff about her order for Carisoprodol and Tramadol on November 26. Respondent
10 confirmed that she had ordered the medications – then admitted that she had diverted the drugs
11 for personal use.

12 g. Respondent was terminated from her employment at Children’s effective
13 December 7, 2009.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Furnishing Of Dangerous Drugs Without A Prescription)**

16 14. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
17 conjunction with Business and Professions Code section 4059, subdivision (a) in that, by her own
18 admission, while on duty as a pharmacy technician at Miller Children’s Hospital Pharmacy, on or
19 about November 26, 2009, Respondent furnished to herself, by ordering then diverted for
20 personal use, dangerous drugs Carisoprodol and Tramadol, as described more fully in paragraph
21 13 above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Impaired Safety Due to Use of Alcohol)**

24 15. Respondent is subject to disciplinary action under Code section 4301, subdivision
25 (h), based on alcohol related misconduct on June 5, 2010, resulting in her conviction for driving
26 under the influence of alcohol by reason of the following facts:

27 ///

28 ///

1 **a. Driving Under the Influence**

2 On or about June 5, 2010, Respondent used alcoholic beverages to an extent or in a
3 manner or injurious to herself or the public, when she operated a motor vehicle while having
4 blood alcohol content per alcohol screening test results of .105 and .115% , resulting in her
5 conviction for driving under the influence under Vehicle Code section 23152(B), a misdemeanor,
6 as described in paragraph 12 above.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Conduct that Would Have Warranted Denial of a License)**

9 16. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
10 that Respondent has engaged in multiple acts of misconduct, each of which would have warranted
11 denial of a license, as follows:

12 **a. Driving Under Influence of Alcohol Conviction—2010**

13 Complainant refers to, and by this reference incorporates, the allegations of
14 paragraph 12 as though fully set forth.

15 **b. Dishonest Acts: On-the-Job-Theft of Drug Stock**

16 Complainant refers to, and by this reference incorporates, the allegations of
17 paragraph 13 as though fully set forth.

18 **c. Furnishing of Drugs Without Prescription**

19 Complainant refers to, and by this reference incorporates, the allegations of
20 paragraph 14 as though fully set forth.

21 **d. Impaired Safety Due to Drugs and Alcohol**

22 Complainant refers to, and by this reference incorporates the allegations of
23 paragraphs 15 as though fully set forth.

24 **PRAYER**

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

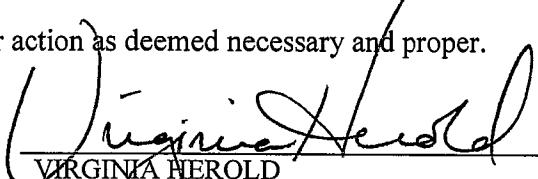
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 36152,
28 issued to Gabriela Gallegos;

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2. Ordering Gabriela Gallegos 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: 6/22/11



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

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