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

12 In the Matter of the Accusation Against:

Case No. 3938

13 **CARLOS ZAMORA CRUZ**
14 **P.O. Box 1716**
Indio, CA 92202

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **93734**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 27, 2009, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 93734 to Carlos Zamora Cruz (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and expired on March 31, 2011.

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1 JURISDICTION

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

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

9 5. Section 4300 of the Code states:

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

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12 STATUTORY PROVISIONS

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

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17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 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

1 substantially related to the qualifications, functions, and duties of the licensee in
question.

2 9. Section 4301 of the Code states:

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

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7 (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
8 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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10 (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.

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12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
15 evidence of unprofessional conduct. In all other cases, the record of conviction
shall be conclusive evidence only of the fact that the conviction occurred. The
16 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
17 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
18 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
19 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
20 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
21 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.

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23 10. Section 4022 of the Code states

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

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

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

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

5 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
6 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 12. Section 4060 of the Code states:

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

24 13. Section 4324 of the Code states:

25 (a) Every person who signs the name of another, or of a fictitious person, or
26 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
27 genuine, any prescription for any drugs is guilty of forgery and upon conviction
28 thereof shall be punished by imprisonment in the state prison, or by imprisonment
in the county jail for not more than one year.

14. Health and 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.

15. Health and Safety Code section 11352(a) states in pertinent part that any person who
sells, furnishes, or gives away any controlled substance, without the written prescription of a
physician, shall be punished by imprisonment for 3 – 5 years.

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1 16. Health and Safety Code section 11368 states:

2 Every person who forges or alters a prescription or who issues or utters an
3 altered prescription, or who issues or utters a prescription bearing a forged or
4 fictitious signature for any narcotic drug, or who obtains any narcotic drug by any
5 forged, fictitious, or altered prescription, or who has in possession any narcotic
6 drug secured by a forged, fictitious, or altered prescription, shall be punished by
7 imprisonment in the county jail for not less than six months nor more than one
8 year, or in the state prison.

REGULATIONS

7 17. California Code of Regulations, title 16, section 1769, provides in pertinent part:

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9 (b) When considering the suspension or revocation of a facility or a
10 personal license on the ground that the licensee or the registrant has been
11 convicted of a crime, the board, in evaluating the rehabilitation of such person and
12 his present eligibility for a license will consider the following criteria:

- 12 (1) Nature and severity of the act(s) or offense(s).
- 13 (2) Total criminal record.
- 14 (3) The time that has elapsed since commission of the act(s) or offenses(s).
- 15 (4) Whether the licensee has complied with all terms of parole, probation,
16 restitution or any other sanctions lawfully imposed against the licensee.
- 17 (5) Evidence, if any, of rehabilitation submitted by the licensee.

17 18. California Code of Regulations, title 16, section 1770, provides:

18 For the purpose of denial, suspension, or revocation of a personal or
19 facility license pursuant to Division 1.5 (commencing with Section 475) of the
20 Business and Professions Code, a crime or act shall be considered substantially
21 related to the qualifications, functions or duties of a licensee or registrant if to a
22 substantial degree it evidences present or potential unfitness of a licensee or
23 registrant to perform the functions authorized by this license or registration in a
24 manner consistent with the public health, safety, or welfare.

COSTS

23 19. Section 125.3 of the Code states, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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1 DRUGS

2 20. Norco is a trade name for hydrocodone with acetaminophen, which is designated by
3 Health and Safety Code section 11056(e)(4) as a narcotic drug and a Schedule III controlled
4 substance, and by Business and Professions Code section 4022 as a dangerous drug. Norco is
5 used as a narcotic analgesic in the relief of pain.

6 21. Oxycontin, the controlled-release oral formulation of oxycodone, is a Schedule II
7 controlled substance as designated by Health and Safety Code section 11055, subdivision
8 (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.
9 Oxycontin is used in the treatment of moderate to severe pain.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (January 10, 2011 Conviction for Possession of a Controlled Substance on June 4, 2010)

12 22. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in
13 that he was convicted of a crime substantially related to the qualifications, functions, and duties of
14 a pharmacy technician. The circumstances are as follows:

15 23. On or about January 10, 2011, in a criminal proceeding entitled *People of the State of*
16 *California v. Carlos Zamora Cruz*, in the Superior Court of Riverside County, Case No.
17 INF10002610, Respondent was convicted on his plea of guilty to violating Health and Safety
18 Code section 11350 (possession of a controlled substance), a felony.

19 24. On or about January 10, 2011, Respondent was sentenced to 180 days in jail with the
20 time to be served in the Sheriff's labor program. Respondent was placed on three years formal
21 probation and ordered to pay a drug program fee of \$190, participate in random drug testing,
22 participate in a counseling or rehabilitation program recommended by his probation officer, and
23 pay a restitution fine of \$200.

24 25. The circumstances that led to the conviction were that in May 2010, Respondent was
25 employed as a pharmacy technician at the Rite Aid #5682 in Palm Desert, California.

26 a. On May 28, 2010, the Loss Prevention Manager for Rite Aid was notified that there
27 were discrepancies with some prescriptions that Respondent handled at Rite Aid.

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1 b. On May 3, 2010, Respondent stole customer S.R.'s hard copy of her prescription for
2 Oxycontin 80mg from Rite Aid #6532. Respondent, posing as customer S.R.'s son, called Desert
3 Hospital Out Patient Pharmacy to see if they could fill a prescription for 120 tablets of 80mg
4 Oxycontin, and was told by the pharmacist that he could. Respondent told the pharmacist that he
5 and his "sister" would come to the pharmacy to fill the prescription. Shortly after that phone call,
6 a Hispanic female attempted to fill customer S.R.'s prescription at Desert Hospital Out Patient
7 Pharmacy. The pharmacist asked the female some basic questions about customer S.R., which
8 she could not answer. The pharmacist became suspicious and asked for additional information,
9 which at this point the female said she would go outside and talk to "Carlos" to get the
10 information he needed. She left the pharmacy and never returned.

11 c. On May 26, 2010, customer L.D. attempted to pick up a refill of his prescription for
12 hydrocodone at Rite Aid #5682. The prescription could not be located at the store. An
13 investigation revealed that Respondent had transferred customer L.D.'s prescription to Rite Aid
14 #6532 in Indio, California and that the prescription was picked up within a few minutes of the
15 transfer, by Respondent's accomplice. The accomplice then gave the drugs to Respondent.

16 d. On June 2, 2010, the Loss Prevention Manager questioned Respondent about the above
17 incidents, and he admitted that he had transferred both prescriptions fraudulently. Respondent
18 also admitted that he had filled approximately six fraudulent prescriptions for Oxycontin on prior
19 occasions. Respondent admitted to having accomplices pick up the Oxycontin for him.
20 Respondent would then get the Oxycontin from his accomplices and sell the Oxycontin to a drug
21 dealer.

22 e. Rite Aid was able to verify that Respondent was involved in the following forged
23 prescriptions by the use of his employee identification number and password which was required
24 to process all of these transactions:

25 1. Rx #567340, dated March 25, 2010 for 120 tablets of Oxycontin 80 mg, for
26 customer D.A. in the name of Dr. A.B.

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1 substances by fraud, that he had received from his accomplices, as more particularly alleged in
2 paragraphs 25 and 26, above and incorporated herein by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (Violation of Statute - Furnishing of a Controlled Substance)

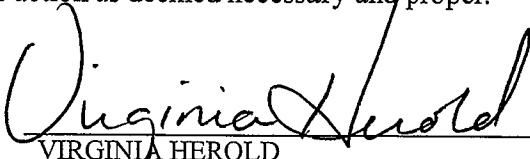
5 29. Respondent is subject to disciplinary action under Code section 4301(j) for violating
6 Code section 4059 and Health and Safety Code section 11352 in that while Respondent was
7 employed as a pharmacy technician at Rite Aid #5682, he furnished controlled substances using
8 forged and fraudulent prescriptions to his accomplices, and when he sold those controlled
9 substances to a drug dealer as more particularly alleged in paragraphs 25 and 26, above and
10 incorporated herein by reference.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 93734,
15 issued to Carlos Zamora Cruz;
- 16 2. Ordering Carlos Zamora Cruz to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 5/19/11


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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