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

11 In the Matter of the Accusation Against:
12
13 **JESSE R. WELKER**
1201 W. Woodcrest Avenue
Fullerton, CA 92833
14
15 **Pharmacy Technician Registration No.**
TCH 34359
16
17 Respondent.

Case No. 4114

A C C U S A T I O N

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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 21, 2000, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 34359 to Jesse R. Welker (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on April 20, 2012, unless renewed.

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JURISDICTION

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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 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, in pertinent part:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

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

17 (4) Revoking his or her license.

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

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

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

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

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

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(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.

....

(i) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.... In all other cases, 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...

....

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

7. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime...
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

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1 8. Section 482 of the Code states:

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

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

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

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

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

12 10. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

22 As used in this section, "license" includes "certificate," "permit," "authority," and
23 "registration."

24 11. Section 4313 of the Code states:

25 In determining whether to grant an application for licensure or whether to discipline or
26 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,
27 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and
28 public protection are in conflict, public protection shall take precedence.

1 **REGULATIONS**

2 12. California Code of Regulations, title 16, section 1770, states:

3 For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare.

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

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

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

20 **COST RECOVERY**

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

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FIRST CAUSE FOR DISCIPLINE

(March 24, 2011 Criminal Conviction for Burglary on or about June 22, 2009)

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

16. On or about June 22, 2009, Officer "M" responded to a business on a report of a male subject opening packages with a knife and concealing the merchandise. Upon arrival, Officer M and an additional officer detained two suspects pending further investigation. Officer M spoke with the reporting party who stated that he observed the male suspect (Respondent) cut merchandise out of a package and conceal it in his pocket. Officer M spoke with Respondent. Respondent stated that he was on medication, but that he did it out of stupidity and that he knew it was wrong. Respondent stated "I confess," and admitted that he cut open approximately six packages and took the items. Respondent admitted to placing the items on his person and in the female suspect's purse. The approximate value of the merchandise was \$440.00. Respondent was arrested for violation of Penal Code section 459, commercial burglary.

17. On July 14, 2009, Respondent was charged with Count 1, a misdemeanor violation of Penal Code section 459-460(b), second degree commercial burglary; and Count 2, a misdemeanor violation of Penal Code section 466, possession of burglary tools.

18. On or about March 24, 2011, in a criminal proceeding entitled *People v. Jesse Ray Welker*, in the Superior Court of California, Court of Orange, West Justice Center, Case No. 09WM06284, Respondent was convicted by his plea of guilty to a violation of Penal Code section 459-460(b), second degree commercial burglary. Count 2 was dismissed. As a result of this conviction, Respondent was granted three years of informal probation, sentenced to thirty days in the county jail, and ordered to pay fines and fees. Respondent was ordered to stay away from Target in Orange County.

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1 SECOND CAUSE FOR DISCIPLINE

2 (March 24, 2011 Criminal Conviction for Petty Theft on or about August 18, 2009)

3 19. Respondent is subject to disciplinary action under Code sections 490, and 4301
4 subsections (f), (l), and (p) in that he was convicted of a crime substantially related to the duties,
5 functions, and qualifications of a pharmacy technician. The circumstances are as follows:

6 20. On or about August 18, 2009, Officer "C" responded to a business (Sam's Club)
7 regarding a male in custody for shoplifting. Upon arrival, Officer C spoke with the Loss
8 Prevention Officer (LPO) who stated that a male (later identified as Respondent) was observed
9 selecting merchandise and concealing the items in his pockets. The total loss to the business was
10 \$34.00. Officer C spoke to Respondent, who stated that he saw several items that he wanted.
11 Respondent stated that he took the items because of his ignorance. Respondent further stated that
12 he walked outside to smoke and forgot that that the merchandise was concealed in his pockets.
13 Officer C noted that Respondent had \$1500.00 cash on his person, and that he was on several
14 different medications due to several different medical problems. Respondent was cited and
15 released from the location.

16 21. On October 1, 2009, Respondent was charged with Count 1, a misdemeanor violation
17 of Penal Code section 484(a)-488, petty theft.

18 22. On or about March 24, 2011, in a criminal proceeding entitled *People v. Jesse Ray*
19 *Welker*, in the Superior Court of California, Court of Orange, North Justice Center, Case No.
20 09NM12466, Respondent was convicted by his plea of guilty to a violation of Penal Code section
21 484(a)-488, petty theft. As a result of this conviction, Respondent was sentenced to thirty days in
22 the county jail, and ordered to pay fines and fees.

23 THIRD CAUSE FOR DISCIPLINE

24 (March 24, 2011 Criminal Conviction for Petty Theft on or about August 18, 2009)

25 23. Respondent is subject to disciplinary action under Code sections 490, and 4301
26 subsections (f), (l), and (p) in that he was convicted of a crime substantially related to the duties,
27 functions, and qualifications of a pharmacy technician. The circumstances are as follows:

1 24. On or about August 18-19, 2009 (11:54 p.m.-12:30 a.m.), Officer "G" responded to a
2 business (Target) regarding a male in custody for shoplifting. Upon arrival, Officer C spoke with
3 the Loss Prevention Officer (LPO) who stated that a male (later identified as Respondent) caught
4 his attention in the store because he appeared to be intoxicated. Respondent was observed
5 opening packages with a sharp item and stuffing the items into his pockets. Respondent made a
6 purchase at the register; however, he did not pay for the items that were concealed in his pockets.
7 Respondent was detained outside the store. The items were recovered, as was a box cutter, from
8 Respondent's pockets. The total value of the loss was \$193.00. Officer G spoke to Respondent,
9 who initially denied the theft. Respondent later admitted to the theft, and stated that it was a poor
10 choice. Respondent stated that he did not intend to steal anything until he was in the store.
11 Officer G noted that Respondent had \$1021.66 cash on his person at the time of the arrest.
12 Respondent was arrested for violation of Penal Code section 488, theft. Respondent was
13 transported and booked into custody at the Fullerton City Jail.

14 25. On April 8, 2010, Respondent was charged with Count 1, a misdemeanor violation of
15 Penal Code section 484(a)-488, petty theft.

16 26. On or about March 24, 2011, in a criminal proceeding entitled *People v. Jesse Ray*
17 *Welker*, in the Superior Court of California, Court of Orange, North Justice Center, Case No.
18 10NM04062; Respondent was convicted by his plea of guilty to a violation of Penal Code section
19 484(a)-488, petty theft. As a result of this conviction, Respondent was sentenced to thirty days in
20 the county jail, and ordered to pay fines and fees.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (May 12, 2011 Criminal Conviction for Reckless Driving on or about November 13, 2009)

23 27. Respondent is subject to disciplinary action under Code sections 490, and 4301
24 subsections (h), (l), and (p) in that he was convicted of a crime substantially related to the duties,
25 functions, and qualifications of a pharmacy technician. The circumstances are as follows:

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1 28. On or about November 13, 2009, Officer "L" responded to the scene of a single
2 vehicle rollover traffic accident. The accident occurred in front of a high school, approximately
3 four minutes before school ended for the day. Respondent's vehicle knocked down two trees,
4 broke a water pipe and cover, grazed a pole, and came to rest on the sidewalk in front of the
5 school. After contact, Respondent was identified as the driver of the vehicle in question.
6 Respondent stated to Officer L that Respondent had "sneezed" and that another vehicle "cut him
7 off." Officer L noted that Respondent spoke slowly and appeared drowsy. Officer L also noted
8 that Respondent had a tube stuck in his arm that was attached to a black fanny pack. Respondent
9 stated that the fanny pack contained liquid antibiotics (Cefazolin) for an infection in his finger.
10 Respondent later admitted to Officer L that he was also taking pain medication for the infection in
11 his finger. Respondent was transported to the Medical Center for treatment of injuries sustained
12 in the accident.

13 29. Officer L attempted to speak to Respondent at the hospital, but Respondent was
14 extremely sleepy and had difficulty answering the questions. Hospital staff advised that
15 Respondent had not been given any medication. The nurse stated, "No, that's all him."

16 30. On November 15, 2009, Officer L spoke to the paramedic who treated Respondent,
17 who also stated that they had not given Respondent any medication. The paramedic stated that
18 Respondent had advised him that he had taken three Oxycontin.

19 31. On April 15, 2010, Respondent was charged with Count 1, a misdemeanor violation
20 of Vehicle Code section 23152(a) - driving under the influence (DUI) of a drug or alcohol. On
21 May 12, 2011, the court amended the complaint to add Count 2, a misdemeanor violation of
22 Vehicle Code section 23103(a) - reckless driving.

23 32. On or about May 12, 2011, in a criminal proceeding entitled *People v. Jesse Ray*
24 *Welker*, in the Superior Court of California, Court of Orange, North Justice Center, Case No.
25 10NM04374, Respondent was convicted by his plea of guilty to a violation of Vehicle Code
26 section 23103(a)- reckless driving. Count 1 was dismissed. As a result of this conviction,
27 Respondent was granted three years of informal probation, required to enroll in and complete a
28 12-hour Alcohol and Drug program, ordered not to drive with a measurable amount of drugs or

1 alcohol in his blood, submit to a chemical test of blood, breath or urine on demand of any peace
2 officer or probation officer, and ordered to pay fines and fees.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct- Dishonest Act)

5 33. Respondent is subject to disciplinary action under Code section 4301(f) in that he
6 committed acts involving moral turpitude, dishonesty, deceit or corruption when he stole and/or
7 damaged merchandise from various merchants, as detailed above in paragraphs 15 through 26,
8 above.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct- Use of any Controlled Substance,
11 Dangerous Drug, or Alcohol to a Dangerous Extent)

12 34. Respondent is subject to disciplinary action under Code section 4301(h) in that he
13 used a controlled substance, dangerous drug or of alcoholic beverage to the extent or in a manner
14 as to be dangerous or injurious to himself, to other people, and to the public, as detailed above in
15 paragraphs 27 through 32, above.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct- Conduct Warranting Denial of Licensure)

18 35. Respondent is subject to disciplinary action under Code section 4301(p) in that he
19 committed acts which, if he had committed before he was issued his Pharmacy Technician
20 Registration, would have warranted the denial of his application for licensure in that he stole
21 and/or damaged merchandise from various merchants with the intent to substantially benefit
22 himself or another, and was convicted of a crime substantially related to the duties, functions, and
23 qualifications of a pharmacy technician, as detailed above in paragraphs 15 through 26.

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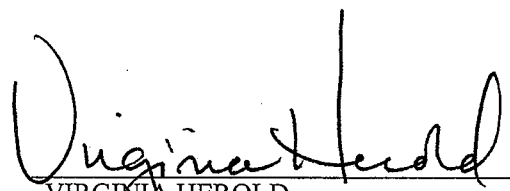
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PRAYER

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 Registration Number TCH 34359, issued to Jesse R. Welker;
2. Ordering Jesse R. Welker 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: 12/1/11



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

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